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January 28, 2018

Leo Chingcuanco (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: Volvo Construction Equipment of North America, LLC – Response to Request for Information under Section 104(e) of CERCLA, U.S. Smelter and Lead Refinery, Inc. Superfund Site (053J), East Chicago, Indiana, Dated June 13, 201

Dear Mr. Chingcuanco:

This letter and its enclosures are hereby submitted as a response to the United States Environmental Protection Agency's ("EPA") Request for Information under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604(e), issued to Volvo Construction Equipment of North America, LLC ("VCENA") and dated June 13, 2017 (the "Information Request").

VCENA makes the following general qualifications and objections to the Information Request:

- VCENA objects to the Information Request to the extent that it exceeds EPA authority under Section 104(e) of CERCLA and is not otherwise authorized by law. It is therefore not a proper exercise of EPA's information-gathering authority.

- Further, VCENA objects to the Information Request to the extent it is vague, ambiguous, overly broad or unduly burdensome.

- VCENA reserves the right to supplement and revise its response, and reserves the right to assert additional objections as it continues to evaluate its response.

Subject to and without waiving these objections and qualifications, below VCENA has included the specific requests in Enclosure C of the Information Request in bold, followed by VCENA's

response to each request. VCENA is providing two copies of this letter, and two CDs containing BATES stamped responsive documents and copies of this letter. The CDs are identical.

1. **Please identify all persons who assisted in responding to this Information Request.**

Christopher Clements (Vice President and General Counsel, VCENA).

2. **Identify all assets and liabilities Volvo acquired or assumed in 2007 when it acquired Ingersoll-Rand's Road Development Division. Provide a copy of the documents that comprised the agreement by Volvo to purchase the Road Development Division. State whether the transaction was an asset purchase. State whether Ingersoll-Rand retained any liabilities of the Road Development Division and, if it did, identify those retained liabilities.**

By way of background, VCENA notes that it previously submitted a response to a Section 104(e) Request for Information relating to ownership of the Blaw-Knox Foundry on April 2, 2012 (the "2012 Response"). The 2012 Response and the attachments thereto are attached as **Attachment A**.

As explained more fully in the 2012 Response, the Blaw-Knox Foundry "was never among the assets purchased by VCENA [from Ingersoll-Rand and] is not now and never was owned by VCENA[.]" 2012 Response at 1. The Blaw-Knox Property was never among the assets purchased by VCENA from Ingersoll-Rand and is not now and never was owned by VCENA, either.

The reason is that the Blaw-Knox Foundry (which appears to have been sited on the Blaw-Knox Property as defined at Term 3 in the Request for Information) was a separate company that was sold back in 1985 by the entity that owned the Foundry and Property at the time, White Consolidated Industries, Inc. ("WCI"). As explained by the United States District Court for the Western District of Pennsylvania (and affirmed by the Third Circuit Court of Appeals), WCI had sold the Blaw-Knox Foundry, including the Property, to a third party:

> In 1985, WCI transferred the BK Businesses and the BK Plans to the Blaw Knox Corporation ("BKC"). BKC was created by Robert Tomsich ("Tomsich") specifically for the purpose of acquiring the BK Businesses and assuming the associated pension plans.
>
> [ ]
>
> The five companies transferred to Tomsich, collectively referred to as the "BK Businesses," consisted of: (1) Blaw–Knox Food & Chemical Equipment; **(2) Blaw–Knox Foundry & Mill Machinery**; (3) Aetna–Standard; (4) Blaw–Knox Equipment; and (5) Duraloy Blaw–Knox. **Blaw–Knox Foundry & Mill Machinery was comprised of two divisions—the Blaw–Knox Castings and Machinery Division in East Chicago, Indiana ("East Chicago")** and the Rolls Division in Wheeling and Warwood, West Virginia.

Pension Benefit Guar. Corp. v. White Consol. Industries Inc., No. 91-cv-1630, 1999 WL 680185, at *2 (W.D. Pa. July 21, 1999) (emphasis added) (footnote and citations omitted), *aff'd sub nom. Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 215 F.3d 407 (3d Cir. 2000).

As a result, when Clark Equipment Company ("Clark") bought the Blaw-Knox Construction Equipment Corporation from WCI almost a decade later, Clark could not have acquired—and did not acquire—the already sold Blaw-Knox Foundry or Blaw-Knox Property. *See* 1994 Agreement of Purchase and Sale attached to the 2012 Response (the "1994 Agreement"); *see also* Clark Equipment Company, U.S. Securities and Exchange Commission Form 8-K at 1 (submitted May 13, 1994) (describing the only real properties purchased as "plants in Rochester, England and Mattoon, Illinois at which asphalt paving equipment is manufactured) (attached hereto as **Attachment B**).

One year later, in 1995, Clark sold the Blaw-Knox Construction Equipment Corporation to Ingersoll-Rand. And in 2007, Ingersoll-Rand sold what it then called the "Road Construction Division" to VCENA. The 2007 Asset and Stock Purchase Agreement between VCENA and Ingersoll-Rand (the "2007 Agreement") is attached hereto as **Attachment C**. It is the only document that comprised the agreement by VCENA to purchase the Road Development Division. This transaction was in part an asset purchase.

Neither the Blaw-Knox Foundry nor the Blaw-Knox Property is included as an asset or a liability in the 2007 Agreement. Schedule 3.18(a) to the 2007 Agreement lists the real property assets acquired by VCENA as follows:

Owned Real Property:

1. ABG Germany Facility - Kuhbrueckenstrass 18, 31785 Hameln, Germany.
2. Bengaluru Facility - Peenya Industrial Area Plots 7 and 8, Bengaluru, India.
3. Letterkenney Facility - 1280 Superior Avenue, Building 56, Chambersburg, Pennsylvania.
4. Los Angeles IRES - 12747 Schabarum Avenue, Irwindale, California.
5. Elkridge 1RES - 5681 Main Street, Elkridge, Maryland.
6. Philadelphia IRES -1430 Drummond Road, Philadelphia, Pennsylvania.
7. Shippensburg Facility - 312 Ingersoll Rand Drive, Shippensburg, Pennsylvania.
8. Southborough IRES - 300 Turnpike Road, Route 9, Southborough, Massachusetts.
9. Springfield IRES - 525 North 24th Street, Springfield, Michigan.

Leased Real Property:

1. ABG France Facility - 5 rue Ampere, Chassieu, France.
2. ABG Test Facility - "Pachvertrag" (lease) dated June 9, 2006 by and between ABG Allgerneine Baumaschinen Gesellshaft mbli and Adolf Vogeley KG relating to real property located at Wallbaumstrasse 12, Hameln, Germany.
3. Adlington Facility - Bays I to 5, Unit 3, Adlington South Business Village, Adlington Nr Charley, Lancashire.
4. Alcoa IRES - 2955 Northpark Boulevard, Alcoa, Tennessee,
5. Branchburg IRES - 37 Readington Road, Branchburg, New Jersey.
6. Coslada Facility - Calle Le Mancha n. 3, Madrid, Spain,
7. Dallas IRES - 3401 East Park Row, Arlington, Texas,

8. Harrisburg IRES - 621 Lowther Drive, Lewisberry, Pennsylvania.
9. Houston IRES - 2210 McAllister, Houston, Texas.
10. India Facility - P-53, Taratolla Road, Kolkata - 700 088
11. Letterkenny Manufacturing Facility - 1280 Superior Avenue, Building 55, Chambersburg, Pennsylvania.
12. Letterkenny Manufacturing Facility - 1280 Superior Avenue, Building 422, Chambersburg, Pennsylvania.
13. Miami Remarketing Facility - 5671 NW 78th Street, Miami, Florida,
14. Milwaukee 1RES - 12311 West Silver Springs Drive, Milwaukee, Wisconsin.
15. Moscow Facility - Settlement Klazma 1G, Khimky District, Moscow Oblast.
16. Phoenix IRES and Arizona Road Institute 4232 East Winslow Avenue, Phoenix, Arizona.
17. Sacramento IRES - 1851 Bell Avenue, Sacramento, California.
18. San Antonio IRES - 6485 South 1H-35, New Braunfels, Texas.
19. San Diego IRES - 601 Front Street, El Cajon, California.
20. San Leandro IRES - 1944 Marina Boulevard, San Leandro, California.
21. Scranton 1RES - 1000 Springbrook Avenue, Moosic, Pennsylvania.
22. Seattle IRES - 7739 First Avenue South, Seattle, Washington.
23. Spokane IRES - 4030 East Trent Avenue, Spokane, Washington.
24. Villa Park TRES - 150 East North Avenue, Villa Park, Illinois.
25. Wuxi Facility - Number 7, Zijing South Road, Xishan Economic Development Zone, Wuxi, China.

Licensed Real Property:

1. Shippensburg Test Track - Ft. McCord Road, Edenville, Pennsylvania.

The provisions of the 2007 Agreement that address Ingersoll-Rand's relevant retained liabilities are Sections 2.2(b)(xi), 2.2(c)(vi), 3.16, and 9.1.

3. **State whether any entities included within the Road Development Division, or predecessors in interest to such entities ever held title to either the Blaw-Knox Foundry or Blaw-Knox Property.**

No entities within the Road Development Division or predecessors in interest to such entities ever held title to either the Blaw Knox Foundry or Blaw-Knox Property. As explained by the District Court, WCI sold the Blaw-Knox Foundry and Property—an entirely separate company from the Blaw-Knox Construction Equipment Corporation—to the Blaw Knox Corporation in 1985. *See Pension Benefit Guar. Corp.*, No. 91-cv-1630, 1999 WL 680185, at *2.

4. **Describe the corporate relationship that exists between Volvo and the former Ingersoll-Rand Road Development Division. Identify all Volvo divisions or subsidiaries that use the words "Blaw-Knox" in their names. Describe the services or products provided by any and all Volvo divisions or subsidiaries that use the words "Blaw-Knox" in their names.**

VCENA objects to Request 4 as "the corporate relationship" is ambiguous, vague, overly broad, and unduly burdensome. Subject to and without waiving its objection, VCENA states that it currently offers the following products:

- P7170B Blaw-Knox Wheeled Paver;
- PF2181 Blaw-Knox Wheeled Paver;
- P7110B Blaw-Knox Tracked Paver; and
- P4410B Blaw-Knox Tracked Paver.

5. **Provide an index of any records in your possession that pertain to operations of any businesses that had operations within the boundaries of the Blaw-Knox Property. If you identify any such records, please:**

    a. **Identify the nature and duration of the operations; include a description of the products made, the processes used to make the products, the waste streams generated, the type and volume (on an annual basis) of air emissions generated by operations, and the practices for disposing of each stream of solid and/or hazardous waste.**

    b. **Describe the manner in which the facility was decommissioned; include in the description a summary of efforts, if any, to identify whether soils at the facility had become contaminated with lead, arsenic or any other hazardous substance; and efforts, if any, to systematically cover in place or remove from the Blaw-Knox Property soils that contained lead, arsenic or any other hazardous substances.**

VCENA has no records within its possession that pertain to operations of any businesses that had operations within the boundaries of the Blaw-Knox Property.

6. **Identify any pollution control permits in your records issued to the Blaw-Knox Foundry or any related entity, under the Clean Air Act, Clean Water Act, Resource Conservation Act, their state law corollaries, and similar predecessor laws.**

VCENA has no responsive records in its possession because VCENA never owned any interest in the Blaw-Knox Foundry or any related entity.

Enclosed is the Statement of Certification, which has been signed by Christopher Clements, Vice President and General Counsel, VCENA.

If you have any questions, please do not hesitate to contact me.

Sincerely,

W. Bruce Pasfield

Enclosures:

VCENA's April 2, 2012 Section 104(e) Request for Information relating to ownership of the Blaw-Knox Foundry (the "2012 Response").

Attachment A thereto: *Pension Benefit Guar. Corp. v. White Consol. Industries Inc.*, No. 91-cv-1630, 1999 WL 680185 (W.D. Pa. July 21, 1999).

Attachment B thereto: March 22, 2012 Letter from Ingersoll-Rand to Kilpatrick Townsend & Stockton LLP.

Attachment C thereto: 1994 Purchase and Sale Agreement, White Consolidated Industries, Inc. and Clark Equipment Company.

Clark Equipment Company, U.S. Securities and Exchange Commission Form 8 K (submitted May 13, 1994).

2007 Asset and Stock Purchase Agreement between VCENA and Ingersoll-Rand (the "2007 Agreement").

Information Request
U.S. Smelter and Lead Refinery, Inc. Superfund Site

DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of the Respondent and that the foregoing is complete, true, and correct.

Executed on January 24, 2018.

Signature

Christopher Clements
Vice President and General Counsel, VCENA

Attachment A

VOLVO CONSTRUCTION EQUIPMENT

April 2, 2012
(828) 650-2005

Via Federal Express

Deena Sheppard, Enforcement Specialist
U.S. Environmental Protection Agency – Region 5
Superfund Division SE-5J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

RE: December 6, 2011, Request for Information Pursuant to Section 104(e) of CERCLA regarding the Gary Development Landfill Site

Dear Ms. Sheppard,

We received the above-referenced request for information and provide the following response to it. On page two of the cover letter, EPA states that it believes that "Blaw Knox Foundry may have information relevant to this investigation" [into disposal of material at the Gary Development Landfill]. Volvo Construction Equipment North America, LLC ("VCENA") has reviewed its files and confirmed that it does not have in its possession any documents that are responsive to EPA's request for information with respect to the Blaw Knox Foundry or the Gary Development Landfill. In addition, VCENA requested that Ingersoll-Rand Company, Ltd review its records for such information, and Ingersoll has confirmed that it supplied all records related to the purchase of certain assets potentially related to EPA's inquiry to VCENA.

We further believe that EPA's request may be based on an erroneous understanding that VCENA purchased the assets of the Blaw Knox Foundry when it acquired certain assets from Ingersoll-Rand. However, the Blaw Know Foundry was never among the assets purchased by VCENA, is not now and never was owned by VCENA, and as such, VCENA does not possess any responsive documents.

In our review of relevant documents, we found the following:

- AB Volvo, the parent company of VCENA purchased certain assets and shares of Ingersoll-Rand Company, Ltd. in 2007. These assets included, among others, Blaw-Knox Construction Equipment Corporation and Blaw-Knox Company. These are separate and distinct entities from Blaw Knox Corporation, the entity that apparently ultimately took ownership of the Blaw-Knox Foundry prior to Ingersoll-Rand's acquisition of these entities through its purchase of Clark Equipment Company.

- In the mid-1990s, Ingersoll-Rand purchased the Clark Equipment Company, which had purchased the road-paving business of AB Electrolux in 1994. The assets acquired by Clark Equipment Company, as set forth in the purchase agreement, did not include the Blaw-Knox Foundry.

- It appears that White Consolidated Industries/AB Electrolux ("WCI") at one time owned the Blaw Knox Foundry. However, prior to Clark Equipment Company's purchase of WCI in 1994, the Blaw-Knox Foundry and other assets were sold by WCI in 1985 to an unrelated party. This history is recited in a 1999 case from the U.S. District Court for the Western District of Pennsylvania (*Pension Benefit Guaranty Corporation v. White Consolidated Industries, Inc.*)(enclosed), and confirms on page 4 that the Blaw-Knox Foundry was transferred in 1985 to Blaw Knox Corporation. Specifically, among the assets that were transferred was the Blaw-Knox Foundry & Mill Machinery (*see* page 5).

Based on the above history, we understand that the Blaw-Knox Foundry was not purchased by Clark Equipment Company. Thus, the foundry was not owned by Ingersoll-Rand, and was not purchased from Ingersoll-Rand by AB Volvo. This brief history explains why VCENA does not possess any documents that are responsive to your request.

Please do not hesitate to contact the undersigned or our counsel (Julie Domike and Alec Zacaroli of Kilpatrick Townsend & Stockton LLP) if you have any questions regarding this letter.

I certify under penalty of law that this document was prepared under my direction in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,

Christopher Clements
Vice President and General Counsel

Enclosure:
Pension Benefit Guaranty Corporation v. White Consolidated Industries, Inc. (W.D. Penn. 1999)
March 22, 2012 Letter from Ingersoll-Rand to Kilpatrick Townsend & Stockton LLP
Purchase and Sale Agreement, White Consolidated Industries and Clark Construction Equipment

cc without enclosure:
Julie R. Domike and Alec Zacaroli
Kilpatrick Townsend & Stockton LLP

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENSION BENEFIT GUARANTY CORPORATION,	)	
Plaintiff,	)	
v.	)	Civil Action No. 91-1630
WHITE CONSOLIDATED INDUSTRIES INC.,	)	
Defendant.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

July 21, 1999

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENSION BENEFIT GUARANTY CORPORATION,	)	
Plaintiff,	)	
v.	)	Civil Action No. 91-1630
WHITE CONSOLIDATED INDUSTRIES INC.,	)	
Defendant.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action arises from the financial collapse of several pension plans which were at all times covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C Section 1301 et seq. Plaintiff Pension Benefit Guaranty Corporatio ("PBGC"), the statutory guarantor of these plans, filed a five coun amended complaint against defendant White Consolidated Industries, Inc., ("WCI") seeking to recover unfunded benefit liabilities pursuant to various applications of 29 U.S.C. Sections 1362 and 136 WCI had previously transferred the plans, along with a group of associated businesses, to Blaw Knox Corporation ("BKC"); thus, WCI was not the contributing sponsor of record at the time of the plans termination.

Judge McCune of the United States District Court for the

Western District of Pennsylvania dismissed the complaint in its entirety pursuant to a motion to dismiss filed by WCI. The United States Court of Appeals for the Third Circuit later affirmed in par and reversed in part Judge McCune's decision, concluding that PBGC had stated viable claims at Counts One and Four of the amended complaint. Pension Benefit Guaranty Corp. v. White Consolidated Industries, Inc., 998 F.2d 1192 (3d Cir. 1993) ("PBGC v. WCI"). Count One charges that WCI is liable for the unfunded pension liabilities pursuant to 29 U.S.C. Section 1362 ("Section 1362") because the WCI-BKC sale transaction was a sham, having no legitima business purpose or economic effect. Count Four charges that WCI i also liable for the unfunded pension liabilities pursuant to 29 U.S.C. Section 1369 ("Section 1369") because a principal purpose of WCI's decision to consummate the WCI-BKC sale transaction was to evade pension liabilities. The court remanded the case to the district court for further proceedings on these counts.

Discovery in this case spanned several years and involved thousands of documents, hundreds of hours of depositions, and numerous experts. Beginning on March 3, 1997, the parties presente extensive testimony and other evidence during a ten day bench trial after which the parties submitted proposed findings of fact and conclusions of law. The case has been extensively and expertly briefed and argued. Based on the evidence, arguments, and

authorities presented, the court makes the following findings of fa and conclusions of law pursuant to Federal Rule of Civil Procedure 52.

I. Findings Of Fact

A. The Major Parties Involved In The WCI-BKC Transaction

1. The Pension Benefit Guaranty Corporation: The Pension Benefit Guaranty Corporation ("PBGC") is a wholly-owned United States Government corporation established pursuant to Title of ERISA. PBGC is the statutory guarantor of certain pension benefits payable to participants of private "defined benefit" pensi plans. (3/3/97 Tr. 76:7-77:1 Deneen)[1]

2. White Consolidated Industries, Inc.: White Consolidated Industries, Inc. ("WCI") is a manufacturer of applianc and home products and the former owner of five unprofitable steel-related companies (the "BK Businesses") and their underfunded pension plans (the "BK Plans").

3. Robert S. Tomsich and Blaw Knox Corporation: In 1985, WCI transferred the BK Businesses and the BK Plans to the Bla Knox Corporation ("BKC"). (P30)[2] BKC was created by Robert Tomsic ("Tomsich") specifically for the purpose of acquiring the BK Businesses and assuming the associated pension plans. Tomsich owne 78% of BKC. (P2) At that time, and currently, Tomsich was also th

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[1] Trial testimony is cited within as follows: (Date of Witness Testimony; Page:Line of Trial Transcript; Name of Testifying Witness).

[2] Plaintiff's and defendant's trial exhibits are cited within as (P x) and (D x) respectively.

President and Chairman of NESCO, Inc., a large Cleveland-based holding company. (3/6/97 Tr. 142:14-143:24 Tomsich Depo.)

4. The BK Businesses: The five companies transferred to Tomsich, collectively referred to as the "BK Businesses," consisted of: (1) Blaw-Knox Food & Chemical Equipment; (2) Blaw-Knox Foundry Mill Machinery; (3) Aetna-Standard; (4) Blaw-Knox Equipment; and (5 Duraloy Blaw-Knox. (P30) Blaw-Knox Foundry & Mill Machinery was comprised of two divisions -- the Blaw-Knox Castings and Machinery Division in East Chicago, Indiana ("East Chicago") and the Rolls Division in Wheeling and Warwood, West Virginia. (P272 at 38230)

5. The BK Plans: The BK Plans transferred to Tomsich consisted of the Blaw-Knox Retirement Income Plan ("Plan 002"); Bla Knox Pension Plan ("Plan 003"); Aetna-Standard Engineering Company Retirement Income Plan ("Plan 004"); Blaw-Knox I.A.M. Pension Plan ("Plan 052"); Blaw-Knox Hourly Pension Plan ("Plan 053"); Blaw Knox Equipment Pension Plan ("Plan 054"); Duraloy Blaw-Knox Pension Plan for Salaried Employees ("Plan 055"); Duraloy Blaw-Knox Union Pensio Plan ("Plan 056"); Blaw-Knox Equipment (Jackson, Mississippi Works) Hourly Pension Plan ("Plan 009"). (P30)

6. W. Derald Hunt: At the time of the transaction, W. Derald Hunt ("Hunt") was the Controller and Chief Accounting Office for WCI. (3/13/97 Tr. 6:12-7:6 Hunt)

7. Daniel R. Elliott, Jr.: Daniel R. Elliott, Jr.

("Elliot") is, and was at the time of the transaction, the Senior Vice President-Law, General Counsel and Secretary of WCI. (3/14/97 Tr. 24:10-15, 26:25-27 Elliott) Hunt and Elliott were the co-architects and chief negotiators of the BKC/WCI transaction from th WCI side. (3/14/97 Tr. 48:9-49:10 Elliott)

8. Squire, Sanders & Dempsey: Squire, Sanders & Dempse ("SS&D"), lead by William H. Ransom ("Ransom"), acted as pension counsel to WCI during the transaction with BKC. SS&D did not act a the lawyers who negotiated the terms of the purchase and sale. (3/11/97 Tr. 133:17-134:7 Ransom) The principal SS&D attorneys who worked on this matter included Ransom, Frank Rasmussen ("Rasmussen" and Carl Draucker ("Draucker"). (3/11/97 Tr. 69:24-72:5 Ransom; 3/12/97 Tr. 7:25-8:10 Rasmussen)

9. Wyatt Company: Wyatt Company ("Wyatt") had been WCI's actuary for many years prior to the transaction. (Parks 11:1 13, 22:7-24:7) As the enrolled actuaries for all of WCI's pension plans, Wyatt prepared the Annual Valuation Reports and Forms 5500[3] for these plans. The principal Wyatt actuaries on the WCI account

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[3] Pension and welfare benefit plans generally are required to file an annual return/report, the Form 5500 Series, regarding their financial condition, investments, and operations. The annual reporting requirement is generally satisfied by filing either the Form 5500 or 5500-C/R and any required attachments. The Department Labor, Internal Revenue Service, and PBGC jointly developed the For 5500 and Form 5500-C/R so employee benefit plans could utilize the Form 5500 Series to satisfy annual reporting requirements under Tit I and Title IV of ERISA and under the Internal Revenue Code.

were John Reynolds ("Reynolds") and Lee Parks ("Parks"). Neither testified live at trial. At WCI's request, Wyatt prepared studies and estimates of the unfunded pension liabilities of the BK Plans f planning and structuring the transaction.

B. WCI's Evaluation of the BK Businesses

10. In the early 1980's, WCI became concerned about the future of the BK Businesses. These businesses had negative net income in 1983, 1984 and 1985, and negligible positive income in 1982. (P40 at ¶13; 4/14/97 Tr. 112:14-113:11 Monheit). Operating losses between 1982 and 1985, not including outlays for interest, taxes and capital expenditures, totaled approximately $24 million. Between 1981 and 1985, capital expenditures totaled approximately $ million and pension costs exceeded $10 million per year. (P40 at ¶ 13)

11. Moreover, the economic prospects for the market in which these businesses were operating was not promising. (3/5/97 T 92:6-11, 93:2-97:14 Dalton; P35) The domestic steel industry was facing increasing international competition at this time and the BK Businesses would require significant additional capital expenditure to modernize their facilities to a competitive level. (P34 at ¶6)

12. WCI knew that the BK Businesses' net income would decrease dramatically upon the impending termination of a major contract with the Army for the production of M60 tanks (the "Tank

Contract"). In the early 1980's, Blaw-Knox Foundry & Mill Machiner the division which produced the M-60s, accounted for all of the Businesses' aggregate net profit after offsetting all the other Businesses' losses. (3/12/97 Tr. 171:9-172:4 Stillman; 4/14/97 Tr. 113:14-114:7 Monheit) In its heyday in the mid-1970's, Blaw-Knox Foundry and Mill produced approximately 129 M60 tanks per month (P803) but production rates steadily declined through the late 70's and early 80's as the government began production of the new M-1 tank. (P141; P176; P759; P803)

13. By January of 1985, WCI knew that the tank contract would terminate no later than March 1986. General Dynamics, a substantial customer, had also informed WCI in January 1985 that there were no further orders beyond the work in progress. (P289) About this same time, WCI's outside counsel, Rasmussen, told the government that East Chicago (the plant still making M-60s) could n be kept open without significant commercial business which was "neither in hand nor on the horizon." (P293; 3/12/97 Tr. 26:23-29: Rasmussen) In June 1985, a study conducted by the consulting firm Arthur D. Little, Inc., concluded that the tank contract was ending and that the East Chicago facility was "unsellable" unless (1) WCI kept the pension liabilities, (2) the purchase price was minimal, a (3) public financing was made available to the buyer to develop the plant for commercial production. (P422 at I-3)

14. In 1982, the WCI Board of Directors decided to retain the outside consulting firm McKinsey & Co. ("McKinsey"). WCI hired McKinsey to perform a strategic study to determine the most effecti ways to improve WCI's overall value, and to evaluate the impact of the BK Businesses on the value of WCI. (3/13/97 Tr. 86:13-87:16 Cyert; 3/14/97 Tr. 27:14-23 Elliott; P34 at ¶ 7; Smith, 10:15-25, 11:13-25; Garda, 13:11-15; 15:12-21: 18:12-19:11; 93:6-94:5)

15. Based on factors such as strategic potential, economic value and cash flow, McKinsey categorized WCI's businesses as "core businesses," "outliers," "potential outliers," and "Exit Businesses." (3/14/97 Tr. 27:23-28:18 Elliott; Garda, 164:25-165:1 165:21-169:25; P224) The "Exit Businesses" were a group of unprofitable, heavy industrial businesses that McKinsey recommended should be sold or liquidated. (3/3/97 Tr. 222:16-24; 223:5-7 Blaydon; 3/13/97 Tr. 87:20-88:11 Cyert; 3/14/97 Tr. 28:11-18 Elliot P34 at ¶8; P224) The Exit Businesses were generally engaged in ste or steel-related industries and all of them had dismal future prospects. (P224) The BK Businesses were designated as Exit Businesses (3/14/97 Tr. 28:11-18 Elliott)

16. McKinsey's recommendation that WCI sell or liquidate the Exit Businesses was accepted by WCI's Board of Directors. (3/13/97 Tr. 7:17-8:4 Hunt; 3/14/97 Tr. 28:11-16 Elliott; 3/3/97 Tr 222:18-223:7 Blaydon; P34 at ¶ 8)

C. Establishment Of The Discontinued Operations Reserve

17. In the fourth quarter of 1984, WCI established a reserve for discontinued operations to provide for the losses it expected to incur in disposing of the Exit Companies (3/5/97 Tr. 166:12-167:19 McQuate Depo; P758) Consistent with Generally Accept Accounting Principles ("GAAP") and in particular Accounting Principles Board Opinion ("APB Opinion") No. 30, the reserve included, inter alia, the estimated book value of the assets in excess of the proceeds expected to be realized on disposal; the estimated costs to be incurred in disposing of the assets; estimate unfunded pension liabilities; and the estimated cost of insurance benefits for retirees. (P192; 3/5/97 Tr. 166:12-167:19 McQuate Depo WCI estimated that it would incur a pre-tax loss of approximately $165 million in connection with the disposition of the BK Businesse (P1; P284; P286; 3/4/97 Tr. 28:13-29:9 Zimmerman)

18. In calculating the reserve for the BK Businesses, WCI anticipated that one of the companies, Blaw-Knox Foundry and Mill Machinery, would be liquidated. Accordingly, WCI recorded shutdown costs and button-up costs for this business. WCI expected, however that the other four BK Businesses would be sold, so costs of liquidation were not recorded for those businesses. (P1; P286; 4/14/97 Tr. 150:22-154:9 Monheit)

19. In order to reserve for the cost of funding the BK

Plans after the assets of the BK Businesses had been liquidated or sold, WCI instructed its actuaries, Wyatt, to calculate the unfunde liabilities of all the BK Plans. Wyatt estimated that the unfunded liability of the BK Plans in the aggregate was approximately $71.5 million. This figure was based on vested benefits. It did not include liabilities for unvested benefits or for benefit increases that would result from salary increases if, in fact, the BK Plans continued and benefits continued to accrue. (P266; 4/14/97 Tr. 151: 6, 169:9-16 Monheit) Wyatt's estimate of $71.5 million was the approximate cost of defeasing all vested liabilities assuming that WCI purchased annuities or investment instruments at or around the time the estimates were made. Accordingly, if WCI were to pay off the unfunded liabilities of the BK Plans over time (e.g., 30 years) it would cost more. (P1; 4/14/97 Tr. 157:16-159:23 Monheit) WCI estimated that amortized over 30 years the actual cost of funding t plans, including interest, was $152 million. (P1; 3/10/97 Tr. 158:2 161:1 Novak)

20. Provident Insurance Company estimated that WCI's liability for retirees health and welfare benefits was approximatel $36 million. (P551) This figure was later revised to $23 million because it had not been reduced to present value. (3/4/97 Tr. 40:5 41:9 Zimmerman; 3/12/97 Tr. 91:2-11, 203:3-7 Stillman)

21. Several WCI witnesses, including Hunt (WCI's Chief

Accounting Officer in the mid-80's) and an outside auditor, testifi that WCI's discontinued operations reserve was based on the "worst case scenario." They characterized the reserve as "highly conservative" and "over-stated." This testimony, as it related to the portion of the reserve associated with the BK Businesses, was n fully credible for the reasons set forth in paragraphs 22 through 2 infra.

22. First, GAAP required WCI to use its best estimates o the costs for disposing of the BK Businesses. (P888; P287; P889; P748; P890) Russell McQuate, WCI's Director of Corporate Accountin testified that, in fact, the reserve represented WCI's best estimat of the costs of exiting the BK Businesses. (3/5/97 Tr. 166:12-167: McQuate Depo.; 3/13/97 Tr. 81:7-82:6 Hunt)

23. Second, there is no evidence that any component of the reserve relating to the cost of exiting the BK Businesses is overstated. For example, Wyatt's estimate that the pension liabilities were $71.5 million was actually reduced by WCI to $59.6 million when recorded in the reserve. (4/14/97 Tr. 169:9-16 Monhei

24. Third, while the total reserve is overstated, that overstatement results from a cushion of over $40 million added afte the discrete costs associated with disposing of the BK Businesses were subtotaled. (P551; 4/14/97 Tr. 155:5-156:18 Monheit)

25. WCI's estimate that it would incur a pre-tax loss of

$165 million on disposal of the BK Businesses was a reasonable estimate and provided a meaningful benchmark against which WCI measured the actual transaction.

26. Indeed, Hunt and Elliot used the $165 million estimated loss as a benchmark when presenting the proposed WCI-BKC sale to WCI's Board of Directors. (P1)

27. In a June 18, 1995 memorandum to WCI's Board members Hunt and Elliot explained that "[b]ased on March 31, 1985 balance sheets of the divisions and the consideration of our letter of intent, the pre-tax loss on this disposal has been reduced to $97 million, for a savings of $68 million." (P1)

D. WCI's Attempts To Divest The BK Businesses

28. Beginning at least in the Spring of 1984, WCI attempted to sell the BK Businesses to several outside buyers as we as to the businesses' respective management teams. (Smith, 106:2-1 P252; P290; P229; P811) Although several individuals expressed an initial interest, WCI was unsuccessful in finalizing a sale. (P252 P216; P230; P305; Schuetz, 48:17-49:8, 60:20-61:7) For example, a proposed deal for the sale of Blaw-Knox Food & Chemical to manageme fell through because the group was unable to obtain financing after several local banks concluded that the revenues of this business would be inadequate to support the debt service. (P290; P305; Ware, 133:7-13, 134:5-25)

29. Around this same time, WCI hired Lehman Brothers Kuhı Loeb ("Lehman Brothers") to evaluate and market the Exit Businesses (3/3/97 Tr. 223:8-14 Blaydon; 3/13/97 Tr. 7:17-8:4 Hunt; 3/14/97 Tr 29:22-30:1 Elliott; P238; Valdez, 8:10-19; Jacobs, 14:3-6; Smith, 102:4-8) Lehman Brothers prepared descriptive offering memoranda according to commonly applied and accepted methods, and proposed a marketing strategy for the BK Businesses. (3/14/97 Tr. 29:22-30:7; P34 at ¶ 10; Valdez, 18:2-5, 18:15-19:3; Ware, 65:18-24; P272, P273 P280, P281, P282)

30. Thereafter, over a period of nearly 12 months, Lehmaı Brothers attempted to market the BK Businesses. (P811; Valdez, 29:

9; P34 at ¶ 11) Lehman Brothers shopped the BK Businesses with the understanding that WCI would retain the pension and health and welfare liabilities. (3/10/97 Tr. 47:16-48:21 Jarrell) Despite extensive efforts and contacts with hundreds of potential purchaser Lehman Brothers was unable to find any potential purchaser who was willing to buy the BK Businesses for cash. (3/14/97 Tr. 93:15-94:1 Elliott; 3/10/97 Tr. 56:4-58:7 Jarrell) In fact, Lehman Brothers only discovered one individual who was seriously interested in acquiring the BK Businesses at all. (3/6/97 Tr. 74:25-76:1 Cvengro Depo.; 3/10/97 Tr. 61:2-10 Jarrell; P276)

31. The fact that Lehman Brothers was unsuccessful in selling these businesses even with WCI retaining the pension and health and welfare liabilities, indicates that the assets of these businesses were unmarketable in terms of a conventional sale. (4/14/97 Tr. 66:12-68:5 Monheit) It also shows that these business were worth substantially below the price that WCI was asking for them. (3/10/97 Tr. 56:4-58:7 Jarrell)

32. Additionally, during the time period that Lehman Brothers was shopping the BK Businesses, the steel industry was experiencing a great deal of merger and acquisition activity. The fact that the extensive efforts of Lehman Brothers produced only on potential buyer reinforces the conclusion that the BK Businesses we unattractive. (P34 at ¶ 12)

E. Joseph Cvengros

33. In or around December of 1984, Lehman Brothers identified Joseph M. Cvengros ("Cvengros") and his company, Anamag, as a potential purchaser of the BK Businesses. (3/6/97 Tr. 74:25-76:1 Cvengros Depo.; 3/10/97 Tr. 61:2-10 Jarrell; P276) By Februar 1985, Cvengros and WCI were discussing a possible deal in which Cvengros would assume some of the pension liabilities of the BK Businesses as partial consideration for the sale. (3/10/97 Tr. 62:2 63:6 Jarrell; P309; P306; P315; P340)

34. WCI asked its outside pension counsel, SS&D, to evaluate whether WCI could be held liable for the unfunded pension liabilities of the BK Businesses if a potential purchaser assumed t pension plans. (3/14/97 Tr. 31:18-25 Elliott; 3/11/97 Tr. 70:10-72:20 Ransom; P303, P327, P315, P340, P10; Parks, 171:21-172:24) A this time WCI also talked to Wyatt about the amount of unfunded pension liability for the BK Businesses. (P303) Based upon the sa Wyatt study used in establishing the discontinued operations reserv WCI estimated that as of February 26, 1985, the unfunded pension liability was $71.5 million. (P303)

35. On April 25, 1985, Cvengros met with various representatives of WCI to discuss the potential purchase of the BK Businesses, and his ideas with respect to the BK Plans. (3/11/97 T 95:11-96:9 Ransom; P6, P334, P7, P8, P9, P10)

36. By this time, WCI knew that it could be contingently liable for any unfunded pension obligations assumed by the buyer. (3/14/97 Tr. 31:18-35:1 Elliott) In particular, WCI was aware of t theories of predecessor liability advanced by PBGC in In re Consol. Litig. Concerning International Harvester's Disposition, 681 F.Supp 512 (N.D. Ill. 1988) ("International Harvester"). (3/11/97 Tr. 70:10-75:16, 83:12-85:18 Ransom; 3/14/97 Tr. 31:18-35:1 Elliott; P6 P303, P329, P33, P327, P315, P340; Draucker, 27:25-30:8, 32:8-15, 73:18-75:14) SS&D advised WCI that PBGC's position in 1985, as reflected in proposed legislation, was that predecessor liability could be imposed for five years after the sale of assets and transf of pension liabilities. (P327; P340; 3/11/97 Tr. 139:12-18 Ransom) While WCI also considered whether it could be held liable under 29 U.S.C. Section 4064, a provision of ERISA that applies only to multiple-employer plans, SS&D attorney William Ransom advised that Section 4064 "did not provide a credible basis" for asserting predecessor liability. (3/11/97 Tr. 134:14-137:8 Ransom) Ransom's primary and principal concern was the theories of predecessor liability advanced by PBGC in the International Harvester case. (Id

37. Prior to the April 25, 1985 meeting with Cvengros, SS&D obtained copies of the pleadings filed in International Harvester from the federal district court in Chicago, and forwarded

them to WCI's General Counsel, Elliott. (P329; P333) Elliott prepar a list of matters for possible discussion at the meeting, including 1) "significance of Wisconsin Steel - Harvester litigation on SS&D conclusions on residual pension liability"; and 2) "What assurances does WCI receive against residual pension liability exposure to PBG does Anamag meet the PBGC 30% of asset value and pension asset test (3/3/97 Tr. 100:11-101:9 Deneen; P6) Hunt raised the question duri the meeting as to "how WCI could be held harmless" in the type of transaction that was under consideration. (P9; 3/13/97 Tr. 113:10-114:1 Hunt)

38. By the conclusion of the April 25, 1985 meeting, Cvengros was proposing a deal in which the buyer would assume the non-retiree assets and liabilities of the BK Plans, WCI would pay $25 million to the buyer and the buyer would terminate the BK Plans before or immediately after closing. (P8; P9; P10) Cvengros also contemplated having PBGC review the deal before closing. (P10) In addition, Cvengros refused to have the buyer assume any of WCI's collective bargaining agreements. (P390)

39. WCI and its counsel recognized serious problems with Cvengros' proposal. WCI's biggest concern was that if the buyer failed or defaulted on the pension liabilities, WCI would be liable (3/11/97 Tr. 97:13-100:13 Ransom; P8; P9; P10) Ransom advised WCI that if the buyer terminated the plans immediately after the closin

PBGC could seek to hold WCI liable for all of the termination liabilities under the theories advanced by PBGC in International Harvester. (P10; Ransom, 304:4-305:2; 320:1-321:17; 323:5-326:12) In a memorandum dated April 29, 1985, Ransom stated that a proposal whereby termination of the pension plans was contemplated as part o the deal was a "double edged sword" and would leave "very little ro for WCI to avoid an International Harvester/Wisconsin Steel situation." (P10) In another reference to International Harvester which appears in his notes from the April 25, 1985 meeting, Ransom identified PBGC as a "problem" because WCI "must still get over dumping initially - not necessarily 5 years." (3/11/97 Tr. 148:17-149:14 Ransom; P8)

40. Ransom was also concerned that if the BK Plans were terminated as part of the transaction, WCI would be viewed as the plan sponsor on the date of termination. (3/11/97 Tr. 154:6-14 Ransom) Then, PBGC would not even need to use theories of "predecessor" liability. Because he perceived termination of the plans to create a significant risk to WCI, Ransom advised WCI that should not enter into a transaction in which the buyer terminated t BK Plans as part of the transaction. (3/11/97 Tr. 154:19-24 Ransom P10)

41. Ransom also advised WCI that it was a bad idea to disclose a deal to PBGC before closing. (3/11/97 Tr. 102:18-103:13

Ransom; P10; Ransom, 167:1-168:5) Ransom was particularly concerne that if the parties went to PBGC prior to the close of the transaction, WCI would be left with "relatively little bargaining room with the PBGC." (P10; Ransom, 303:3-304:3) Ransom concluded, however, that if problems relating to the transfer of pension liabilities were worked out in the context of plan termination, as opposed to before the deal, the situation might be "sufficiently cloudy as far as the PBGC was concerned (i.e. they might have to us International Harvester/Wisconsin Steel theories to recover from WCI)." (P10)

42. Based on Ransom's advice, WCI considered Cvengros' proposal risky and economically unattractive. (3/13/97 Tr. 121:4-123:23 Hunt) After the April 25, 1985 meeting, although Cvengros sent several draft proposals to WCI, neither Hunt nor anyone else a WCI had any further substantive communications with Cvengros or his representatives. (3/13/97 Tr. 122:21-123:23 Hunt)

43. Sometime around or after April 25, 1985, WCI identified Tomsich as a potential buyer who might be convinced to accept an offer involving the assumption of pension liabilities tha was more favorable to WCI than Cvengros' proposal. (P351; P354; P355; P356)

44. On June 11, 1985, Cvengros' attorneys met with PBGC officials to discuss the proposed transaction. PBGC told Cvengros'

attorney Bertrand Harding ("Harding") that it wanted "full value," for the plans. (Harding, 29:14-41:5; 3/12/97 Tr. 39:22-41:12 Mackiewicz; 3/3/97 Tr. 137:14-139:1 Mackiewicz Depo.; P382) The da after this meeting, Harding had one or more telephone conferences with WCI. (Harding, 28:19-29:8; P410)

45. One week later, on June 18, 1985 WCI signed a letter of intent with Tomsich. (P1) On June 25, 1985, Hunt sent Cvengros letter confirming that WCI had signed a letter of intent with anoth party because WCI had "concluded that another offer was of more value" to it. (P411; Cvengros, 118:24-119:22)

F. Robert Tomsich

46. Around the end of April 1985, Karl Ware ("Ware"), a WCI Executive Vice-President, called Tomsich, a Cleveland business man who owned a diversified group of businesses through a holding company called NESCO, Inc. (3/5/97 Tr. 159:16-160:6 Ware Depo; 3/14/97 Tr. 41:21-24 Elliott) Ware knew Tomsich socially through th Cleveland Yacht Club where they both were members. (3/5/97 Tr. 159:16-160:21 Ware Depo; Tomsich, 10:24-11:13) Roy Holdt, WCI's Chief Executive Officer at the time, also had a casual social relationship with Tomsich and had known him for several years prior to 1985. (3/5/97 Tr. 161:24-162:6 Ware Depo.) Tomsich was not one the potential buyers contacted by Lehman Brothers.

47. On May 31, 1985, WCI sent both Cvengros and Tomsich an identical letter which suggested that there were several purchasers interested in acquiring the BK Businesses. (P364; P265) Two proposed letters of intent were also enclosed with each letter. (P364; P265) One of the proposed letters provided for the purchase of the BK Businesses through the assumption of the pension

obligations ("version #1"), and the other, through cash ("version #2"). (3/14/97 Tr. 35:24-36:3 Elliott; P364; P365) Although versi #1 provided for the purchase of the BK Businesses through the assumption of liabilities, many of its terms were substantially different than those proposed by Cvengros. (P365; P12)

48. Tomsich never submitted any counter proposals to WCI's draft letters of intent. (3/6/97 Tr. 235:9-16, 238:4-7 Tomsi Depo.) After comparing the economics of the deal involving the assumption of pension liabilities to the cash deal, Tomsich and his advisors concluded that the buyer was being asked to "assume" approximately $67 million in pension and benefit liabilities in version #1. Version #2 did not specify the amount of cash consideration but there is evidence that Tomsich thought that the assets were worth approximately $20 million. (P16; P18; 3/14/97 Tr 94:18-96:18 Elliott) Lehman Brothers had estimated the value of the assets to be $32 million. Tomsich recalled that the expected purchase price under the second option was "very high" and substantially above the book value and net worth of the BK Businesses. (3/6/97 Tr. 263:14-25 Tomsich Depo.)

49. Tomsich chose the deal involving assumption of the BI Plans knowing that neither he nor NESCO would ever have to pay the unfunded liabilities. Tomsich learned that under ERISA, corporatio and individuals related by more than 80% common ownership (who are

then members of a "controlled group") have joint and several liability for the unfunded pension liabilities of all the controlle group members. If Tomsich owned less than 80% of the stock of the buyer corporation, neither he personally nor NESCO would be part of the buyer corporation's controlled group and neither would be liabl for the pension liabilities if the BK Plans terminated. (3/14/97 T 49:11-19, 94:18-98:1 Elliott; P2; 3/5/97 Tr. 164:14-166:11 Tomsich Depo.; 3/6/97 Tr. 150:5-151:2 Tomsich Depo.; 3/14/97 Tr. 20:21-21:2 Hunt)

50. The provision of the letter of intent, whereby Tomsich would own only 78% of the buyer corporation, became the linchpin of the deal. (3/5/97 Tr. 164:14-166:11 Tomsich Depo.) Baker & Hostetler, Tomsich's lawyers, gave him a written opinion th neither he personally nor his other corporations would have any liability for the BK Plans' unfunded liabilities. (P2) Without th assurance by his attorneys that NESCO and he personally would not b liable to PBGC for the BK Plans' underfunding, Tomsich would not ha consummated the transaction. (3/5/97 Tr. 164:14-166:11 Tomsich Depo.)

51. This structure enabled WCI to evade massive unfunded pension liabilities without requiring Tomsich to actually assume them. (3/5/97 Tr. 164:14-166:11 Tomsich Depo.) For this reason, i would be inaccurate to characterize the liabilities transferred to

Tomsich as "consideration" for the BK Businesses' assets, within th traditional meaning of that term, because neither Tomsich nor his company was obligated to pay the liabilities. Only the assets of t buyer corporation were at risk of being used to satisfy the pension obligations, and Tomsich was not paying anything for these assets. As discussed, infra, the assets were woefully inadequate to satisfy the BK Plans' unfunded liabilities either through the operating income they could reasonably be expected to produce over time, or through their liquidation value upon plan termination. (P40)

52. In addition to limiting Tomsich's ownership interest to 78%, the other major features of the letter of intent signed on June 18, 1985 were as follows: (1) the buyer was to assume the unfunded pension liabilities for current employees and post-1982 retirees; (2) WCI was to keep the pension liability associated with pre-1982 retirees which were purportedly fully funded because they were supposedly covered by a dedicated bond fund; (3) WCI was to pa $20 million into the BK Plans over 5 years; (4) the buyer also assumed the liability for retiree health and life insurance benefit without any contribution from WCI. (P1)

53. On June 19, 1985, the day after Tomsich signed the letter of intent, representatives of WCI met and decided, unilaterally, that the first draft of the purchase and sale agreeme would assume that the buyer would take over the entire pension and

retiree medical and life insurance liability, including the "dedicated bond fund." This included retiree pension liability fro all of the BK Businesses as well as some additional plants that had been closed for many years and were not transferred to BKC in the sale.

54. This major decision was reached despite the fact tha the Letter of Intent did not provide for the assumption of these additional liabilities and despite the fact that Tomsich was not ev present at the meeting. (P1, P402, P19; Ransom, 411:19-416:13; P78 The reason for WCI's change of mind on this issue is clear: WCI ha been informed that it would end up with significant unfunded liabilities if it retained the dedicated assets and liabilities in the BK Plans. (P17; P384)

55. Tomsich could afford to be indifferent even to such a significant modification of the deal because he did not intend to p the liabilities. (3/14/97 Tr. 49:11-19, 94:18-98:1 Elliott) Indee he was confident that PBGC would be the entity which was ultimately responsible for the payment of these liabilities. (3/5/97 Tr. 162:19-164:6 Tomsich Depo.)

56. Consequently, Tomsich never conducted any independent actuarial studies of the BK Plans. Tomsich hired Towers Perrin Forster & Crosby ("TPF&C") merely to "look over the shoulders" of Wyatt. William Kuendig ("Kuendig") was the TPF&C actuary assigned the engagement. Kuendig neither reviewed Wyatt's "calculations" no did any independent calculations of his own. In fact, Kuendig was instructed by Tomsich <u>not</u> to check on Wyatt's "calculations" or to determine how they valued the pension liabilities, but to presume that Wyatt's actuarial work was correct and done properly. (3/6/97

Tr. 3:14-4:7, 8:3-9:3, 15:24-17:4, 17:24-20:16 Kuendig Depo.; P444; P731; Kuendig, 10:24-11:15, 12:4-13, 14:19-20, 21:21-22:22, 24:23-25:4, 37:16-17, 68:21-69:5)

G. The Estimates Of Pension Liability Used In The Transactio Did Not Reflect Economic Reality

57. When WCI began negotiating with Cvengros and Tomsich for the assumption of pension liabilities, it had its actuaries at Wyatt recalculate the estimates of the BK Plans' unfunded liabilities. The recalculated liability was substantially less tha any liability number it had previously calculated.

58. Between late 1984 and the time of the transaction in September 1985, the "amount" of the BK Plans' unfunded liabilities calculated by Wyatt decreased from nearly $80 million to $40 millio (P266, P303, P318, P321, P322, P358, P348, P458) This decrease of approximately $40 million resulted from the way Wyatt calculated th liabilities, including the assumptions it used; it did not result from any decrease in the number of participants entitled to benefit or to any decrease in the level of their benefits. (3/5/97 Tr. 22:22-35:15, 39:1-41:14 Logue; P37)

59. PBGC expert Dennis E. Logue, Ph.D., ("Professor Logue") concluded that the economically relevant value of the unfunded pension liabilities and health and welfare benefits to BKC on September 27, 1985, with the BK Plans ongoing, as was required under the WCI-BKC Agreement, was approximately $98.3 million, $74.6

million for unfunded pension liabilities and $23.7 million for heal and welfare benefits. (3/5/97 Tr. 22:22-35:15 Logue; P37)

60. Professor Logue's $74.6 million figure was consisten with Wyatt's earlier $71.5 million figure which was calculated outside the negotiation process. Professor Logue's calculation was also consistent with the advice Mary Riebold, WCI's testifying actuarial expert, gave to buyers who were assuming pension liabilities as part of a sale; namely, that it should take into account its "Post Acquisition Intentions and Projections" in calculating the true amount of pension liabilities it is assuming, including the effect of anticipated shutdowns and other business changes and anticipated salary increases. (3/11/97 Tr. 37:4-38:11 Riebold; P887)

61. We find that Professor Logue's calculation is the most accurate calculation of the amount of unfunded pension liabilities and health and welfare benefits BKC assumed in Septembe 1985.

62. In April 1984, Wyatt estimated the total unfunded liabilities of the BK Plans including "shutdown benefits" as of December 31, 1983, to be approximately $88 million.[4] (P4) In

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[4] The term "shutdown benefits" is a misnomer. These are benefit payable to eligible participants who lose their jobs through any number of ways, including lay off and disability. (3/4/97 Tr. 99:2 100:5, 115:23-116:14 Langhans; 3/11/97 Tr. 38:22-39:21 Riebold; P36

October 1984, Wyatt calculated the unfunded liabilities at $71.5 million as of December 31, 1984. (P266) WCI used this $71.5 millio figure (after offsetting the overfunding in some of the individual Plans) as the amount it disclosed to the public and to the capital markets in WCI's discontinued operations reserve. (3/13/97 Tr. 74:25-77:3 Hunt)

63. Notwithstanding that Wyatt had already calculated th BK Plans' unfunded liabilities as of December 31, 1984, WCI asked i actuaries to recalculate them again as of January 1, 1985, specifically for the negotiations. (P318; P322) In a draft letter dated April 11, 1985 Wyatt calculated that the additional "shutdown liabilities that would be incurred if the BK Businesses closed was $11,090,000. (P318) Hunt told Wyatt to prepare a new version of th April 11, 1985 letter for "the eyes of the buyer" without the information on shutdown liabilities. (P322) Accordingly, Wyatt deleted the calculation of "shutdown benefits" from an April 16, 19 version of the letter on the stated ground that "there would be no plant shutdowns or massive layoffs involving the divisions." (P322 This assumption ignored the fact that the tank contract would end soon and that it was highly unlikely that East Chicago would remain open afterwards. (P293) Wyatt failed to mention, or otherwise

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(...continued)
P825)

provide information on, the fact that WCI had already laid off massive numbers of employees who would soon be eligible for "shutdo benefits" even if the facilities continued to operate. (P293; P321 3/11/97 Tr. 15:12-16:11 Riebold)

64. In an April 16, 1985 letter, Wyatt "calculated" the total unfunded vested (accrued) liabilities of the underfunded BK Plans to be $55.4 million as of January 1, 1985. (P321) Wyatt the offset the overfunding in Plans 002 and 005 against the amount of underfunding and concluded that the aggregate unfunded vested liability was $46.8 million. (P321) That letter understated the pension liabilities as follows:

a) At WCI's specific request, Wyatt actuary Reynolds excluded over $11 million in shutdown or 70/80 benefits from its calculations on the stated ground that "there would be no plant shutdowns or massive layoffs involving the divisions." (P322) Reynolds failed to mention, or otherwise provide information on, the fact that WCI had already laid off many employees who were already or soon would be eligible for such benefits, even if the facilities remained open. (P293; 3/11/97 Tr. 38:22-42:13 Riebold)

b) The supposed underfunding in the April 16, 1985 letter did not take into account the BK Plans' dedicated

assets and liabilities. On the relevant date of the study, January 1, 1985, several of the individual BK Plan. had almost $4 million less in total assets than their dedicated liabilities alone and were deficient by more than $11 million when the Plans' "dedicated" assets were considered. (3/4/97 Tr. 154:9-162:14 LaBombarde) WCI later convinced Tomsich to assume the BK Plans' dedicated assets and liabilities on the ground that those liabilities were fully funded and it would not increase the amount of liabilities BKC was assuming. (P606)

c) Wyatt used a 14% interest assumption to calculate the present value of the BK Plans' "dedicated" liabilities even though there was no dedicated bond fund to justify the use of the 14% rate. (P38; 3/4/97 Tr. 145:4-12 LaBombarde) The BK Plans' unfunded liabilities would have increased by $11 million using an appropriate assumption. (P36; 3/4/97 Tr. 100:11-101:3 Langhans)

d) The April, 16, 1985 letter did not include all the accrued liabilities under the BK Plans for which BKC would be responsible; they only included vested liabilities for the underfunded Plans and nonvested benefits in the sufficiently-funded Plans only to the extent funded. The exclusion of these benefits was misleading in light of the fact that BKC had to keep the BK Plans ongoing.

65. In August 1985, Wyatt later "updated" its April 16, 1985 letter. (P458) In a letter dated August 13, 1985, Wyatt reported that as of July 31, 1985 the BK Plans' underfunding had decreased $6.6 million, to $40.2 million. (P458) The $6.6 million reduction corresponded to a calculated increase of $6.8 million in the overfunding in Plan 002 (from an $8.1 million excess reported f Plan 002 in the April 16, 1985 letter to a $14.9 million excess reported for Plan 002 in the August 13, 1985 letter). (P321, P458)

This overfunding disappeared by closing a month later on September 27, 1985 -- the excess assets in Plan 002 that BKC received on that date totaled only $8.5 million. (P816)

66. Wyatt's pre-sale letters inaccurately portrayed the amount of underfunding BKC was assuming. WCI was fully aware of th fact. In the first draft of the WCI-BKC Purchase and Sale Agreemen next to the language which requires WCI to warrant the representations made to the Buyer, one of SS&D's lawyers wrote in t margin, "Except Wyatt; problem with Wyatt; Wyatt out!!!" (P414 at 27) In all subsequent drafts as well as the final Purchase and Sal Agreement, WCI expressly declined to warrant the accuracy of any representations made by Wyatt. (P414, P466, P469, P472, P408, P30) In an early draft letter of intent Hunt wrote "catastrophic if disclosed" next to the paragraph setting forth that the Buyer would assume the pension liabilities as quantified by Wyatt. (P14) In addition, according to a memorandum Ransom wrote in June 1985, Hunt announced that he would not entertain any questions about Wyatt's $46.8 million underfunding figure in the April 16, 1985 letter. (P23)

67. Wyatt's underfunding calculations performed specifically for the negotiations were inconsistent and unreasonabl

68. WCI contends that the difference between the $46.8

million and the $40.6 million figures reported by Wyatt and the $74 figure reported by Professor Logue is due in large part to the fact that Professor Logue based his calculations on a projected benefit obligation ("PBO") number, which takes into account pensioners' future salary increase, whereas Wyatt used an accumulated benefit obligation ("ABO") number, which does not take such increases into account. WCI contends that Wyatt's use of an ABO figure was proper

69. As Professor Logue pointed out, however, a PBO figur should be utilized when valuing pension liabilities for an entity that is presumed to be a going concern, as was the assumption for t BK Businesses. (3/5/97 Tr. 26:20-27:5 Logue)

70. In any event, there was no substantial difference between a PBO and an ABO figure for the BK Plans because a large number of people were already retired and collecting benefits. (3/5/97 Tr. 27:6-25 Logue)

H. The Transaction

71. WCI controlled the drafting of all versions of the Purchase and Sale Agreement. (Tomsich, 242:3-10) Tomsich did not understand the pensions (3/13/97 Tr. 64:17-65:21 Hunt) and his principal negotiator, the Reverend Benjamin Lantz ("Lantz"), had never been involved in any prior corporate transactions. (3/6/97 T 145:23-146:4, 186:24-187:6 Tomsich Depo; Lantz, 6:17-7:9). In fact

prior to coming to NESCO, Lantz had spent his entire career in academia. (3/6/97 Tr. 144:11-25 Tomsich Depo; 3/13/97 Tr. 60:8-15 Hunt) Lantz's education and training were in Critical Biblical Research. (Lantz, 105:19-106:8)

72. On September 27, 1985, BKC and WCI executed a Purchase and Sale Agreement ("WCI-BKC Agreement") and related agreements whereby WCI transferred the BK Businesses to BKC. (P30) The major provisions of the WCI-BKC Agreement were as follows:

(a) WCI transferred and BKC acquired essentially all the assets of the BK Businesses plus a cash payment by WCI in the amoun of $20 million. (P30 at ¶ 2.1.1-.1.14) The assets of the BK Businesses retained by WCI included all cash and cash balances and all accounts receivable as of the closing date. (P30 at ¶ 2.2.1 - 2.2.13; 3/4/97 Tr. 29:17-30:1 Zimmerman)

(b) The "consideration" BKC was to give for the sale was the assumption of all liabilities of the BK Businesses including al current balance sheet liabilities, all liabilities with respect to the pension plans assumed, and all retiree and medical and life benefits. (P30 at ¶ 3.1, 8.1; 3/4/97 Tr. 31:14-16 Zimmerman)

(c) WCI warranted that there had been no material adverse change in the BK Businesses since August 31, 1985 EXCEPT

(i) the M60 contract was expected to expire in approximately seven months (P30 at ¶ 4.1.6); and

(ii) the BK Businesses continued to incur operating losses, to face substantial competition from foreign competitors, a to suffer from conditions affecting the industries in which they competed. (P30 at ¶ 4.1.6)

(d) WCI also warranted that no representation made by WCI in the WCI-BKC Agreement or in any writing furnished to BKC contain any untrue statement of material fact. (P30 at ¶ 4.1.24) However, excluded from the scope of the warranties were any analysis, valuation, or conclusion contained in any report or letter of Wyatt (P30 at ¶ 4.1.25)

(e) In addition to the $20 million cash paid at closing, WCI was to pay BKC $20 million in five equal annual installments du on September 15, 1986 through 1990. (P30 at ¶ 5.1.8; 3/14/97 Tr. 64:23-65:2 Elliott) BKC executed an Irrevocable Assignment whereby these annual payments were assigned to the pension trusts. (P500) WCI also agreed to pay BKC $6 million for retiree medical and life insurance benefits and severance obligations, payable $2 million at closing and $2 million on the next two anniversary dates. (P30 at ¶ 5.1.9)

(f) BKC assumed the outstanding amounts owed under a $7.2 million Industrial Revenue Bond that had been issued by Duraloy Bla Knox to acquire new equipment. (P30 at ¶ 2.1.14) BKC executed a mortgage and security agreement securing this obligation. (P30 at ¶ 5.2.7, 2.1.14)

(g) BKC obtained a letter of credit in favor of WCI. WCI could draw down the funds if PBGC threatened to terminate the BK Plans or if BKC went into bankruptcy. (P30 at ¶ 7.2.7) BKC obtain

the letter of credit with $15 million of the $20 million paid by WC to BKC at closing. (3/4/97 Tr. 29:24-30:10 Zimmerman) WCI agreed t reduce the letter of credit by $5 million after 42 months plus $5 million on each anniversary thereafter, but only if there had no been a claim or demand asserted or threatened with respect to any o the assumed plans, BKC had made the required payments to the BK Plans, plan termination proceedings had not been initiated by BKC o PBGC, and BKC was not in bankruptcy. (P30 at ¶ 7.2.7(b); 3/4/97 Tr 34:9-35:6 Zimmerman)

(h) While the letter of credit was outstanding, BKC was not permitted to return any capital contributed in cash, sell asset except in arms-length transactions for fair consideration, make loa to majority shareholders, enter into transactions with shareholders except on an arm's-length basis, or guarantee obligations of majori shareholders. (P30 at ¶ 5.2.13; 3/14/97 Tr. 65:5-9 Elliott; 3/4/97 Tr. 32:1-22 Zimmerman)

(i) During the first year after closing BKC had to provide WCI with monthly income statements and balance sheets. (P3 at ¶ 5.2.14) During the second through fifth years, BKC provided W with quarterly income statements and balance sheets as well as certified annual financial statements. (P30 at ¶ 5.2.15, 5.2.16; 3/14/97 Tr. 65:10-19 Elliott)

(j) BKC assumed all of the following pension plans

associated with the employees and retirees of the BK Businesses: Plans 002, 003, 004, 052, 053, 054, 055, 056, and 009 (the BK Plans (P30 at ¶ 6.1) Plans 003 and 002 also included employees and retirees of four Blaw Knox plants which WCI closed prior to the sal because of underutilization and obsolescence of those plants. One these plants had been closed since 1968. The total amount of unfunded pension liability associated with closed plants that were never owned or operated by BKC was $16 million. (3/14/97 Tr. 79:17 81:25 Elliott; P217; P92 at 006219)

(k) BKC succeeded to all rights and obligations of WCI under the assumed plans, including full responsibility for all liabilities and obligations of the plans whether contingent, known, or unknown. (P30 at ¶ 6.4.1.-6.4.3; 3/14/97 Tr. 82:1-84:7 Elliott) BKC agreed to indemnify and hold WCI harmless for all benefits unde the assumed plans, the minimum funding obligations of the plans, an the termination of any assumed plans. (P30 at ¶ 6.4.3; 3/14/97 Tr. 82:1-84:7 Elliott)

(l) BKC agreed that for each plan year after closing, until and including 1990, it would contribute to the plans an amoun no less than the greater of (i) the amount necessary to satisfy the minimum funding required by § 412 of the IRS Code and § 302 of ERIS and (ii) the amount necessary to satisfy the minimum funding requir by the terms of the Plans; but under no circumstances could the

aggregate contribution total less than $400,000 for 1985 or less th $1.2 million for 1986-90. The obligation under both clauses (i) an (ii) were determined without regard to any credit balance in the funding standard account carried over from any prior year, or transferred from another assumed plan. (P30 at ¶ 6.4.4)

(m) Until 1990, BKC was required to give WCI 30 days notice of the spin-off, division, merger, or transfer of assets or liabilities of any assumed plan. (P30 at ¶ 6.4.6)

(n) If an overfunded plan terminated prior to January 1, 1992, BKC had to use the excess to reduce unfunded liabilities in other plans. (P30 at ¶ 6.4.5)

(o) BKC agreed to recognize the unions and to offer employment to all BK employees covered by collective bargaining agreements (including employees on lay-off and call back) at the sa wages, benefits, and conditions of employment provided by the union contracts in effect at closing. (P30 at ¶ 6.9)

(p) BKC was capitalized at $1 million of unencumbered capital. (P30 at ¶ 7.2.6; 3/4/97 Tr. 34:4-8 Zimmerman)

(q) At closing WCI delivered to BKC (1) a draft in the amount of $2 million; (2) a draft in the amount of $15 million endorsed over to the cash collateral account at Ameritrust; and (3) draft in the amount of $5 million. (P30 at ¶ 9.2.7 - 9.2.8)

(r) Ameritrust granted BKC an approval of loans facility,

capped at $15 million, with the amount of credit limited to 80% of BKC's qualified accounts receivable plus 25% of inventory. This lo was secured by Ameritrust's first lien on all the assets of BKC. B would be in default of the loan if, inter alia, a pension plan terminates or a claim or demand arising from the Plans is made against WCI. (3/14/97 Tr. 98:15-108:14 Elliott)

(s) BKC also entered into a security agreement with WCI which secured BKC's obligation under the WCI-BKC Agreement to assum the pension liabilities. WCI's security interest in all of the assets of BKC was subordinate to Ameritrust's first lien. BKC woul be in default of the security agreement with WCI if a claim or dema arising from the assumed plans is made against WCI; or if PBGC or B initiated a plan termination. (3/14/97 Tr. 98:15-108:14 Elliott)

I. WCI's Expressed Purpose For The Sale To BKC

1) June 18 Memorandum

73. In a memorandum to WCI senior management, dated June 18, 1985, Hunt and Elliott compared the cost to WCI of doing the proposed Tomsich deal with the reserves established at year end 198 for discontinuing these operations. (P1) The analysis showed that WCI saved $68 million by doing the Tomsich deal as compared with th planned disposition. (P1; 4/14/97 Tr. 157:13-159:23 Monheit) A small portion of the savings resulted from the fact that BK Foundry and Mill Machinery was being sold, not liquidated, and WCI therefor

avoided shutdown and button-up costs for that division. By far, however, the largest component of the savings emanated from transferring the unfunded pension liabilities. (P1; 4/14/97 Tr. 157:13-159:23 Monheit) In the discontinued operations reserve, WCI estimated that it would pay $59.6 million to fund the BK Plans. (P at 49550) If it did the Tomsich deal, WCI estimated that it would pay only $17 million, the present value of $20 million in five annu installments. The $43 million difference that would flow to WCI fr the Tomsich deal was the direct result of WCI not paying the unfund pension liability. (P1 at 49550; 4/14/97 Tr. 157:13-159:23 Monheit

74. The June 18 memorandum expressly stated that the "principal economic benefit to WCI" was the assumption by the buyer of the pension liabilities and the health and welfare obligations. (P1)

75. The June 18 memorandum also contained WCI's comparison of cash flows under two scenarios. Assuming that the ne unfunded pension liabilities of the BK Plans were approximately $46 million as set forth in Wyatt's April 16, 1985 study, discussed infra, WCI estimated that it would have had to pay $184 million ove 30 years if it kept all the obligations for retiree benefits in connection with its divestiture of the BK Businesses, after considering an up-front receipt of $32.5 million in proceeds. A fu $152 million of that $184 million was directly related to defeasing

the unfunded pension liabilities associated with the BK Businesses: $46 million to pay off the "principal" amount of the underfunding; million for WCI's current contribution to the Plans; and $98 millio for the "pension interest" that would allow WCI to pay off the liabilities on an ongoing basis over 30 years rather than all at on in a termination. (P1 at 49549) Under the proposed Tomsich deal, WCI anticipated having to pay out only a total of $25 million relating to the BK Plans. (P1 at 49550)

76. Hunt and Elliott did inform their superiors, however that this "overall economic benefit" was "not without some risk to WCI." (P1) They mentioned the International Harvester case, and t fact that "[i]f Buyer fails in the early years of its operation, there might be an attempt by the Pension Benefit Guaranty Corporati (PBGC) . . . to cause WCI to pay the then unfunded pension liabilities." (P1) But since WCI would "be counseled throughout b Squire, Sanders & Dempsey on this matter to minimize [its] exposure Elliott and Hunt concluded that the economic benefit of the deal "f outweighs" the risk. (P1) Indeed, Hunt and Elliot included calculations which showed that WCI would be in substantially the sa position on a cash-flow basis if the buyer failed within the first seven years after the deal and WCI ended up paying the transferred retiree liabilities. (P1)

2) WCI's Comparison Of The Tomsich Deal To A Cash Sale

77. Around the time of the June 18 memo, WCI also prepared an analysis that compared both the Tomsich deal and a cash sale "as is, where is" to estimates recorded in the discontinued operations reserve. (P910) The analysis showed that if WCI kept t liabilities and sold the assets of the BK Businesses "as is" for $47.4 million, that deal would produce a savings of $30.7 million over the discontinued operations reserve. (P910) This was not eve half of the economic benefit ($67.6 million) produced by the Tomsic

deal.

78. WCI offered evidence to attempt to prove that the economic benefit that flowed to WCI from the Tomsich deal was about the same as would have been produced by a conventional sale in whic WCI kept the pension and retiree liabilities and the buyer paid WCI $38 million in cash. A letter dated June 21, 1985 from Wyatt to WC states this conclusion. (P405) Reynolds, who wrote the letter, could not explain the calculations or how he arrived at $38 million (3/11/97 Tr. 223:16-224:13 Reynolds Depo.) In addition, the conclusion in the June 21 letter, i.e. that the value to WCI of the Tomsich deal was equivalent to a conventional sale in which a buyer paid $38 million in cash cannot be reconciled with the analysis presented to senior management in the June 18 memorandum; that memo written just three days earlier, compares the Tomsich deal to a cas sale for $32 million and concludes that the Tomsich deal makes WCI better off by $68 million. We conclude that the June 21 letter, although contemporaneous, is self serving and contrary to sound economic analysis and we give it little weight.

79. Moreover, it is important to note that there was no buyer willing to pay $38 million or $46 million for the BK Businesses. Only two potential buyers ever expressed a serious interest in the BK Businesses -- neither of which offered to purcha the businesses for cash. (3/13/97 Tr. 118:15-119:4 Hunt; 3/14/97 T 93:15-94:17 Elliott; 3/10/97 Tr. 56:4-58:7 Jarrell; P40 at ¶ 14) I

the summer of 1985, WCI had a choice between the Tomsich deal and liquidating all the Businesses. It chose the Tomsich deal because was $68 million better than its only alternative.

3) The Decision Of The Board

80. On July 26, 1985, Tomsich came back to WCI with what Reynolds characterized as "a bargaining ploy." (P447) Tomsich sai that the "BK Businesses were not worth what he originally thought, that equipment was in poor shape, that prospects for turn-around we poor" and that he wanted WCI to do something about it. (P447; 3/13/97 Tr. 135:23-138:23 Hunt)

81. Four days later, on July 30, 1985, the WCI Board of Directors approved the deal as proposed in the letter of intent on the condition that the definitive agreement not reflect more than a $10 million adverse variance from the projected $68 million in savings from the originally booked pre-tax loss. (P24) Saving at least $58 million was the sine qua non of the Board's approval. (P24)

82. At trial, a member of the Board who participated in the decision testified that one of the Board's goals in approving t deal was to realize the significant economic benefit that resulted from BKC assuming the unfunded pension liabilities. (3/13/97 Tr. 109:22-111:11 Cyert) He did not disagree with the characterization of Hunt and Elliott in their June 18 memorandum that the "principal

economic benefit was BKC's assumption of the liabilities. (3/13/97 Tr. 109:22-111:11 Cyert)

4) Implementation Of The Board's Decision

83. After the Board made its decision to save money by transferring the pension obligations, senior officers of WCI implemented that decision. On August 6, 1985, Tomsich proposed a significant change in the deal because of his concerns about cash flow and the annual pension contribution of $7,809,000. (P421; Tomsich, 223:23-225:5) In this modified deal, Tomsich would have assumed substantially less pension liability than he had previously agreed to assume. (P458; P464; Hunt, 246:21-247:13, 248:20-249:22) He would also require WCI to keep BK Foundry & Mill Machinery. (P421) Hunt testified that at this time in early August the deal w "limping very, very badly." (3/13/97 Tr. 138:20-22 Hunt)

84. At the request of Hunt, Wyatt prepared the August 13 1985 actuarial study of the BK Plans as of July 31, 1985, assuming that WCI would retain the pension obligation for all retired and vested terminated employees and all participants employed at East Chicago. Under Hunt's scenario, Wyatt concluded that the aggregate unfunded liability of the BK Plans was $40.2 million, of which $32. million would remain with WCI and $7.4 million would transfer to th buyer. (P458)

85. On August 13, 1985, Hunt prepared an analysis of the deal, comparing: (1) the discontinued operations reserve as record in December 1984; (2) the deal presented to the Board of Directors

July 30, 1985; (3) a deal in which Tomsich would not take East Chicago or retiree liabilities (Tomsich's proposal as of 8/6/85); a (4) a deal in which Tomsich would take East Chicago and all retiree liabilities. (P25) As calculated by Hunt on August 13, 1985, the deal without the buyer taking East Chicago or assuming retiree liabilities (Tomsich's proposal as of 8/6/85) only produced an estimated reduction to the originally estimated pre-tax loss of $43,157,000, and thus did not fit within the parameters established by the Board of Directors on July 30, 1997. (P25)

86. Hunt knew that he had to get the deal back within the board's parameters. (3/13/97 Tr. 138:5-8 Hunt) Thus, on August 1 1985, Hunt met with Tomsich, on Tomsich's yacht, and convinced Tomsich to take East Chicago and the retiree liability. (P464; Hun 234:14-235:3) Hunt told Tomsich that even with the East Chicago shutdown the Army would be obligated to pay all of East Chicago's shut-down expenses, unfunded pension and medical benefits, plus the equipment which would result in a $5 million gain. (3/3/97 Tr. 186:15-24 Tomsich Depo.; Tomsich, 242:22-243:17) Tomsich believed, therefore, that the payment by the Army for pensions was going to cover the entire unfunded liability at East Chicago. (Tomsich, 242:18-22) Thus, Tomsich agreed that he would again take East Chicago and assume the retiree liabilities. (Hunt, 358:2-359:9)

5) August 21 Memorandum

87. Shortly thereafter, in an August 21, 1985 memorandum from Hunt and Ware to certain WCI Board members, Hunt and Ware stat that the deal as agreed upon with Tomsich was "the highest practica value obtainable for the operating units included in this package a is in excess of the values estimated by Lehman." (P27) They also stated that the Tomsich deal is "within the guidelines established the Board of Directors at its July 30, 1985 meeting." (P27)

J. WCI's Structuring Of The Transaction

88. WCI was aware of the International Harvester case anc of proposed legislation which contained provisions whereby a seller would have contingent liability for a five year period following th sale of assets and transfer of pension liabilities. (P327) SS&D advised WCI that, although not enacted, this proposed legislation could reflect PBGC's current position. (P327)

89. SS&D advised WCI that PBGC's current position in 198! was that predecessor liability could be imposed for five years afte a transaction. (3/14/97 Tr. 31:18-35:1 Elliott; P327) Thus, WCI designed the transaction to keep BKC afloat for five years, and to protect WCI in the event that BKC failed despite its plan to keep i going during this time period. (3/5/97 Tr. 159:3-12 Hunt Depo.; 3/14/97 Tr. 62:16-69:8 Elliott; 3/4/97 Tr. 41:10-46:7 Zimmerman)

90. Tomsich must be presumed to be a rational economic actor. No rational economic actor would buy the assets of the BK Businesses (worth no more than $32-36 million) for $98.3 million (t total $74.6 million in unfunded pension liabilities and $23.7 milli in health and welfare benefits we find that BKC assumed in Septembe 1985) if that buyer actually had to pay the liabilities. (P37; FF 59-61) Therefore, the predominant source of economic gain to WCI a Tomsich in the transaction was the high likelihood that the $74.6 million in unfunded pension liabilities of the BK Plans would eventually be transferred to PBGC. (3/4/97 Tr. 23:18-23 Zimmerman; 3/5/97 Tr. 162:8-163:22 Tomsich Depo.; 3/6/97 Tr. 50:6-51:20 Hunt Depo.; P1; P39; P839)

91. WCI knew that it could be exposed to potential liability to PBGC for the BK Plans' unfunded liabilities, but believed that this risk was minimized if the Plans were ongoing for five years after the closing of the WCI-BKC sales transaction. (3/14/97 Tr. 31:18-35:1 Elliott) Therefore, WCI had strong economi incentives to make sure BKC survived for five years. (3/4/97 Tr. 36:9-46:21 Zimmerman; P39) WCI was gambling that, if the Plans terminated after five years, PBGC would not pursue WCI, the predecessor employer. (P1; P10)

92. Indeed, WCI and Tomsich in effect financed the transaction with PBGC's funds.

93. Many provisions of the WCI-BKC Agreement were designed to reduce the likelihood of BKC failing or the BK Plans terminating in the five years after the sale. WCI's payment of $20 million to the pension plans over five years insured that minimum contributions would be made for five years regardless of BKC's ability to generate the cash to pay them. (P30 at ¶5.1.8; P36 at p.7)

94. WCI monitored BKC's finances for five years after th sale. (P30 at ¶5.2.14-¶5.2.16) It also retained substantial decision making control over BKC's dividend policy, incentive contracts, investment strategy, financing policy and administration of the BK Plans. WCI's control strangled Tomsich's ability to make independent entrepreneurial decisions but allowed WCI to manage its risk. (3/4/97 Tr. 32:1-33:25, 41:17-42:5, 56:1-23 Zimmerman)

95. The letter of credit was a device whereby WCI could police BKC's compliance with the covenants contained in the WCI-BKC Agreement for five years. If BKC failed to make pension plan contributions or took actions to jeopardize the viability of the WC BKC Agreement, then WCI could withdraw money from the letter of credit, thereby making BKC liable for those funds. (3/4/97 Tr. 41:10-46:21 Zimmerman; P39 at p.10)

96. The legal and other costs associated with the creation of the various Ameritrust agreements came to approximately

$450,000 -- about half the equity contributed by Tomsich's buying group. (3/4/97 Tr. 41:17-44:8 Zimmerman) There were less expensiv ways of structuring this deal if WCI only wanted to dispose of the Businesses. (3/4/97 Tr. 41:17-45:23 Zimmerman) WCI knew that it could be liable for the pension liabilities, however, so it bought lot of security and insurance to make sure that BKC survived for fi years and the pension liabilities did not revert back to WCI pursua to either International Harvester or the proposed legislation. (3/4/97 Tr. 42:18-46:7 Zimmerman)

K. The $20 Million Payable By WCI Over 5 Years Was Not Designed To "Equalize" The Values In The Transaction

97. WCI attempted to legitimize the economics of the transaction by taking the position that the assets and liabilities transferred to BKC were equal. WCI presented evidence attempting t demonstrate that WCI witnesses testified that the total liabilities exceeded the assets only by $20 million and that was the reason for WCI's $20 million payment to the plans over five years. WCI's evidence was unconvincing.

98. For example, WCI's theory depends upon using the numbers that were supposedly used by the parties in August and September of 1985 when the deal was finalized. (3/12/97 Tr. 198:11 19 Stillman) WCI therefore claims that the assets plus WCI's $20 million contribution equal the liabilities IF the pension liabilities were $35 million. As previously noted, however, the

value of the unfunded pension liabilities transferred to BKC was approximately $74.6 million. (3/5/97 Tr. 22:22-35:15 Logue; P37)

99. An analysis of the WCI-Tomsich June 18, 1995 letter of intent also casts substantial doubt on WCI's claim that the payments to the pension plans were always designed to equalize values, even at the time the letter of intent was signed.

100. Pursuant to WCI's claim, the value of the BK Businesses' assets at the time of the June 18, 1995 letter of inten was $61 million, as shown below.

Items going to BKC (millions)		)	17
(a) Assets	$61		
(b) WCI payments to pension plans		liabilities (P.V.	$78

Items benefiting WCI
(millions)

(c)	Pension liabilities assumed by BKC	$47
(d)	Health & welfare liabilities assumed by BKC	23
(e)	Cash and notes from Tomsich	8
		$78

(a) Because all other numbers in this chart are known, the value of the assets is derived mathematically.

(b) Present value of the WCI pension payments. (P1 at 76277) The letter of intent did not provide for WCI to make payments for health and welfare benefits. (P1 at 76263-69; 3/12/97 Tr. 204:22-205:2 Stillman)

(c) (P23 (6/24/85); P22 (notes recording 6/19/85 meeting))

(d) Adjusted from incorrect estimate of $36 million. (3/12/9 Tr. 203:3-7 Stillman)

(e) (P1 at 76277)

101. The $61 million value for the assets is far outside the range of $30-40 million used by the experts from both sides and well above the high end of the Lehman range. (3/4/97 Tr. 35:7-39:5 Zimmerman)

L. Contemporaneous Documents Indicate That WCI Structured Th Transaction To Keep BKC Alive For Five Years

102. Further evidence that WCI structured the transaction in order to keep BKC alive for five years to evade the pension liabilities to PBGC is shown in other memoranda and written notes prepared at the time of the WCI-BKC sales transaction.

103. On June 10, 1985, WCI executive Ware told Ralph Nehrig, an associate of Tomsich, that WCI was "concerned about getting the five year period behind them." (P16)

104. The day after WCI and Tomsich signed the June 18, 1995 letter of intent, Ransom met with WCI executives, its in-house counsel, and its actuaries, and noted that WCI wanted the buyer to maintain the plans for at least five years. (P19) Ransom recogniz that one advantage to this approach was that the deal "may look better to PBGC" and "doesn't look as much like a dumping." (P19) But Ransom also recognized that the five year limit could look more like an evasion. (P19; Ransom, 423:9-425:14) Ransom further noted that WCI gained an advantage by the buyer maintaining the BK Plans for at least five years because "it should take WCI off statutory hook (except for new legislation)." (P19) Ransom identified other advantages to WCI if the buyer maintained the plans for at least fi years noting that:

"(4) net worth might increase and give WCI more protection for that reason - even before end of 5 year period - than immediat

termination.

(5) [except] for reportable event filing, would not invite PBGC in." (P19)

105. At this meeting, Hunt directed the participants to "push aside" any thought of immediate termination of the Plans. (P22) Hunt said that the first draft of the WCI-BKC Agreement shou require continuation of the BK Plans until 1990 (or five years). (P22)

106. When drafting the WCI-BKC Agreement, Ransom struggle over the issue of where to place the obligation of the buyer to maintain the BK Plans for at least five years. (P23) Ransom recognized that "although such commitment could be included in paragraph A.4," "it might withstand PBGC's scrutiny better if it we placed in a separate section." (P23)

107. Shortly before the final agreement, BKC requested financing from Ameritrust. In the course of evaluating the credit request, Ameritrust was informed that "WCI feels it could be obligated on the past unfunded pension obligation ... for up to fiv years (the PBGC can go after them) if BKC does not fund the require payments annually." (P29)

108. Tomsich also understood that the five year period wa important to WCI because its potential liability to PBGC would disappear five years after the transfer of the liabilities. (3/6/9

Tr. 165:21-169:9 Tomsich Depo.)

109. Nonetheless, several WCI witnesses testified during trial that the deal ultimately struck between WCI and Tomsich was structured as it was to protect WCI from strict liability under section 4064. Specifically, WCI asserted that the letter of credit was structured to decline over five years to follow the declining liability provided for in section 4064. Such testimony was not credible. The letter of credit did not decline in even increments over five years. (P510) In fact, WCI initially did not agree to release any portion of the letter of credit until 3½ years after th close of the transaction. (P510; 3/11/98 Tr. 140:3-143:25 Ransom) Additionally, the original draft letter of intent which was sent to Tomsich and Cvengros provided for a 10 year declining letter of credit. (3/11/97 Tr. 142:12-25 Ransom) Moreover, in a key memorandum which described the letter of intent that WCI ultimately executed with Tomsich, Hunt and Elliott told senior management that the transaction posed some risk to WCI of liability under International Harvester. (P1) The memorandum does not even mentio § 4064. (P1) If the architects of the deal had structured the transaction to avoid liability under § 4064, one would expect that they would have conveyed this to senior management and WCI's Board.

M. WCI Knew That BKC Could Not Satisfy The Pension Obligations

110. WCI witnesses testified that at the time of the

transaction, WCI believed that BKC would succeed. WCI offered this testimony to respond to PBGC's evidence that WCI intended to evade pension liability. WCI contends that because it reasonably believe that BKC could survive long-term and satisfy the pension obligation it did not intend to use BKC as a conduit to dump the BK Plans' unfunded pension liabilities on PBGC. The testimony of WCI witness that they believed BKC would succeed, is contrary to the objective facts and is not credible. Sophisticated, reasonable business people, such as Hunt and Elliott, could not reasonably have expecte BKC to survive and to satisfy $74.6 million in pension liabilities along with all the other debts transferred.

1) BKC Was Insolvent

111. One reason why WCI could not reasonably have expecte BKC to survive and satisfy the transferred pension obligations was that BKC was materially insolvent as of September 27, 1985. (3/10/ Tr. 43:14-44:10 Jarrell; P40 at ¶54) PBGC expert witness Gregg A. Jarrell, Ph.D., ("Professor Jarrell") performed an analysis which showed that the negative net worth of BKC as of September 27, 1985 was somewhere between $22 and $51 million. (3/10/97 Tr. 17:19-18:1 Jarrell)

112. Professor Jarrell's discounted cash flow analysis placed a value of approximately $36 million on the assets of BKC. (3/10/97 Tr. 40:9-42:8 Jarrell) The 13.2% discounted rate which he

chose for this analysis was very conservative. (3/10/97 Tr. 20:1-1 Jarrell.)

113. Professor Jarrell, in performing his discounted cash flow analysis, took into account several possibilities for levels o capital expenditure by BKC and also whether the cost savings measur projected in the BKC business plan (P3) were achieved. (3/10/97 Tr 32:13-42:8 Jarrell) At the mid-point of these calculations, was approximately a $36 million value for the assets of BKC. (Id.)

114. Even after a $5 million annual level of capital expenditures from the period 1988 through 1991, the fixed asset turnover is 5.7 for 1991, up from 4.0. (3/10/97 Tr. 47:1-5 Jarrell That is still a conservative assumption.

115. Professor Jarrell performed a number of "ballpark checks" for the reasonableness of his asset calculation. (3/10/97 Tr. 47:7-14 Jarrell) Professor Jarrell's valuation of the assets w consistent with the number used by Lehman Brothers at the time it w attempting to market the divisions. (3/10/97 Tr. 47:17-48:21 Jarrell)

116. In addition, the BKC business plan (P3) placed a liquidation value of $37.5 million on the assets. (3/10/97 Tr. 49: 52:3 Jarrell) This $37.5 million figure used in the BKC business plan (P3) did not include the industrial revenue bond amount of approximately $8 million. (3/10/97 Tr. 51:11-18 Jarrell) WCI's

expert, Dr. Stillman, conceded this point. (3/12/97 Tr. 190:4-9 Stillman)

117. The efforts by Lehman Brothers to sell the Blaw Knox divisions further confirmed the asset value calculated by Professor Jarrell. (3/10/97 Tr. 56:2-61:1 Jarrell)

118. Professor Jarrell's analysis showed that BKC had jus enough cash to make it through 1990. (3/10/97 Tr. 67:4-21 Jarrell) In 1991, the first year in which WCI did not contribute to the pension plans, the cash flow of BKC would be negative. (3/10/97 Tr 67:17-70:2 Jarrell; P40 at Exh. I.) Thus, the capital structure of BKC was designed to get it through the first five years.

119. Professor Jarrell also showed convincingly that the capital structure of BKC was insufficient to withstand a reasonably likely economic downturn. His calculations showed that, based upon the Tomsich projections, plus an assumed $5 million of "steady stat capital investment for the period 1988 through 1991 (excluding any cost savings), BKC had just enough cash to make it through 1990. (3/10/97 Tr. 67:4-68:1 Jarrell)

120. Professor Jarrell demonstrated that the analysis of WCI's expert, Dr. Stillman, showed that BKC was insolvent by at lea $34 million by mid-1987. (3/10/97 Tr. 70:5-72:20 Jarrell)

121. WCI's expert Mr. Monheit criticized Professor Jarrell's analysis contending that he did not take into account tha

BKC could increase its cash flow by borrowing money. 3/10/97 Tr. 86:9-87:18 Jarrell)

122. First, there was no credible evidence that BKC had the ability to obtain additional credit. Indeed, Ameritrust cancel BKC's line of credit in September 1990. (P735)

123. More importantly, BKC's potential ability to borrow more money in 1991 is not probative on the issue of BKC's insolvenc (3/10/97 Tr. 86:9-87:18 Jarrell)

124. As Professor Jarrell pointed out, the ability "to go out and borrow money does not make the company not insolvent. It's like the family that's insolvent. If your family is insolvent on your own personal financial balance sheet, your asset values are insufficient to meet your liabilities, including credit card debt. Observing that you might be able to go out and get some additional credit cards against which you can borrow money does not magically make you become solvent. What that does is, even if it's true that you could get those credit cards, what that does is it puts off the inevitable, and it makes the consequences even worse." (3/10/97 Tr 87:7-18 Jarrell)

125. In any event, Ameritrust in fact canceled BKC's line of credit in September 1990. (P735)

126. WCI also attempted to show that external factors suc as unexpected deterioration of the steel industry caused BKC to fai This showing was also unpersuasive, however, as there was no significant deterioration in the market value of the equity of stee companies in the period 1985 through 1987. (3/10/97 Tr. 89:8-90:13 Jarrell)

2) <u>BKC Could Not Meet Its Pension Contribution Requirements</u>

127. Prior to the transaction, WCI contributed approximately $10 to $12 million to the BK Plans for each plan year from 1980 through 1984, and the Plans paid out approximately $10 to

$12 million in benefits each year. (P93-138; Joint Statement of Uncontested Facts (Doc. No. 171) at paras. 289-298) WCI had to kno that WCI's $4 million annual contribution plus whatever minimal amount BKC could generate would be (1) significantly less than WCI had paid in recent years; (2) insufficient to pay the accruing interest on the liability; and (3) far less than the amount of benefits being paid out. (P93-138; 3/5/97 Tr. 39:1-44:15 Logue; P3 P38)

128. After the transaction, the combined contributions by WCI and BKC were, in fact, dramatically less than WCI's historic contributions. For plan year 1985, BKC was not able to make any contributions, and the total amount of benefits paid out equaled at least $12 million. For plan year 1986, BKC contributed $2.3 millio and the total amount of benefits paid out equaled $19.1 million. F plan year 1987, BKC contributed $2.4 million, and the total amount benefits paid out equaled $20.5 million. For plan year 1988, BKC contributed $887,000, and the total amount of benefits paid out equaled $20.5. For plan year 1989, BKC contributed $6.6 million, a the total amount of benefits paid out equaled $24.5 million. For plan year 1990, BKC contributed $517,000, and the total amount of benefits paid out equaled $20.7 million. (P36 at Table 2)

129. For plan years 1985 through 1990, BKC was required t contribute a total of $29.6 million under the WCI-BKC Agreement; it

actually contributed only $12.7 million. (P36 at 10) WCI was awar of, and agreed to these reductions because it knew that BKC could n afford to make the contractually-required contributions. (P651; P657; P667; P670; P677)

3) Post-Sale Dispute

130. Shortly after the sale, a dispute developed between WCI and BKC over inter alia, the amount of unfunded pension liabilities BKC had assumed in the transaction (the "post-sale dispute"). (3/13/97 Tr. 123:24:-124:11 Hunt; Kuendig, 79:23-80:23; P559) BKC complained that WCI had made misrepresentations about, a had understated, the pension liabilities assumed by BKC. (P602)

131. In an attempt to resolve the post-sale dispute, BKC'. actuary, Kuendig, requested access to critical information from WCI and its actuary, Reynolds, but did not receive such information. (P764; Kuendig, 70:11-15 (1/1/85 employee data); P580 (amount of dedicated assets in each plan over the years); P587 (photocopies of Wyatt's worksheets)) WCI was aware of, and actively participated i the post-sale dispute and the exchange or non-exchange of requested information. (P558; P575; P593, P562) Elliott negotiated the post sale dispute on behalf of WCI and Hunt negotiated for BKC. (3/13/9 Tr. 123:24 -124:6 Hunt; P32) Elliott was glad that Hunt was involv in the post-sale dispute so Hunt could "influence Lantz to abandon his ridiculous positions." (P32; 3/13/97 Tr. 124:25-125:6 Hunt)

132. Elliott sent Hunt a letter dated July 25, 1986 which outlined WCI's position on the issues involved in the post-sale dispute. (P602) Elliott wrote, "it is in both our interests to ge this matter behind us. Litigation or any other public airing of th

dispute would bring unwanted attention from the government and jeopardize all of Blaw Knox." (P602)

133. Hunt, Elliott and Reynolds participated in a conference call on July 31, 1986 about the dispute. (P 32; 3/13/97 Tr. 126:16-24 Hunt) Hunt read Elliott and Reynolds a letter he had drafted in response to Elliott's July 25, 1986 letter, which stated inter alia that "[o]nly by determining the net unfunded liability f the employees, other than the Retirees, can you really get back to the economic basis on which the [WCI-BKC] transaction was concluded (P32; P606; 3/13/97 Tr. 125:11-129:17 Hunt)

134. Even though Elliott and Reynolds agreed that Hunt's draft letter was accurate, Elliott told Hunt not to share the lette with people from BKC if it was a "smoking gun" and would damage WCI (P32; P606; 3/13/97 Tr. 129:18-22, 131:11-13 Hunt)

135. The real value of the liabilities of the nonretiree pension plans would be a "smoking gun".

136. Elliott stated that disclosure of such information would violate Hunt's confidentiality agreement with WCI. (P606; 3/13/97 130:1-5 Hunt) Elliott instructed Hunt to send him and Reynolds a copy of his draft letter and "not to discuss it with [Tomsich] or his team." (P32; 3/13/97 130:10-14 Hunt)

137. Elliott informed Hunt that if he had knowledge of a "smoking gun" he was to participate in a cover-up. (P32) Hunt was

"so angry" that he wrote five pages of notes regarding his conversations with Elliott. (P32; 3/13/97 Tr. 130:15-131:13 Hunt) Specifically, Hunt wrote, "It was 'not okay' and with [Elliot's] threat of violating a confidentiality agreement to tell the truth r pension issue if it reveals that BK was harmed." (P32) Hunt furthe wrote, "If I had knowledge that was in effect a 'smoking gun,' I wa to participate in a cover up." (P32) Hunt testified, "I felt threatened [by Elliott]." (3/13/97 Tr. 133:2-4 Hunt)

138. A few weeks later, Elliott (on behalf of WCI) and Hunt (on behalf of BKC) settled the dispute. (P738) The settlemen agreement signed by Hunt and Elliott restricted both BKC and WCI fr suggesting, alleging, or asserting that either BKC or WCI had "engaged or acquiesced in any action, policy or practice that would constitute a violation of any statute or any regulation or ruling o a governmental agency, department or entity." (P738) If either BK or WCI went to PBGC, the entire settlement agreement was off. (P73 3/14/97 Tr. 19:15-20:20 Hunt)

4) Ameritrust Knew BKC Was Failing

139. The evidence establishes that Ameritrust's extension of credit to BKC was not an indication of BKC's financial viability or creditworthiness. (3/14/97 Tr. 98:15-108:14 Elliott)

140. Ameritrust knew that BKC was financially distressed, and between 1985 and 1990, reduced and eventually canceled the cred

extended to BKC. (3/14/97 Tr. 98:15-108:14 Elliott)

141. Ameritrust's main concern in making a loan to BKC wa to be sure that, if a pension plan terminated, it could be repaid i cash before PBGC asserted a superior lien against BKC's fixed asset (3/14/97 Tr. 98:15-108:14 Elliott)

142. Ameritrust set-up a lock box arrangement for collection of all BKC's receivables. (3/14/97 Tr. 98:15-108:14 Elliott)

143. Indeed, Ameritrust was confident that it would be repaid in full from cash in the lock box plus current receivables before PBGC could take any action. (3/14/97 Tr. 98:15-108:14 Elliott)

144. Moreover, in January 1987, BKC asked Ameritrust to increase its credit facility from $15 million to $25 million. (P63 After reviewing BKC's financial condition, Ameritrust concluded tha BKC's "operating performance is terrible," and denied BKC's request (P634)

145. By May 1987, BKC was on Ameritrust's "watch list," and considered "Blaw Knox to be in a liquidation mode." (P641; P64

146. By June 1987, Ameritrust advised BKC of its concer with BKC's continuing losses "which show no sign of abating," the inability of BKC to make "accurate financial forecasts and

projections," and the "continued deterioration" of BKC's balance sheet. (P646)

147. Even after BKC reduced its outstanding loan amount with proceeds from the sale of its gratings operations in Broadview Illinois and Jackson, Mississippi, Ameritrust still graded BKC's credit performance as "substandard." (P694; P696)

148. In August 1989, Ameritrust noted that BKC's curren cash flow would be "insufficient" to pay the additional $4 million annual pension contributions once WCI ceased its payments in 1990. (P712)

149. On August 1, 1990, Ameritrust advised BKC that it was terminating its credit facility as of September 30, 1990. (P735 Ameritrust noted that "[t]he approval of loans facility, which is intended to help finance Blaw Knox's working capital needs, has instead been used to fund cash losses." (P735)

5) <u>WCI Released Its Liens So BKC Could Sell Its Assets And Pay Its Debts</u>

150. As the BK Businesses continued to fail, WCI, notwithstanding its security interests, allowed Tomsich to liquidat the BK Businesses over a five year period.

151. In July 1986, WCI released the lien on the Broadview Illinois Blaw Knox Equipment plant. (3/14/97 Tr. 76:13-16, 86:1-87 Elliott)

152. In June 1987, WCI released the lien so BKC could sel Aetna Standard. (3/14/97 Tr. 76:13-16, 86:1-87:9 Elliott)

153. In 1987 and 1988, the equipment and machinery at Eas

Chicago was sold, and eventually WCI released the lien on East Chicago's real estate. (3/14/97 Tr. 76:13-16, 86:1-87:9 Elliott)

154. In January 1988, WCI released the lien on the Blaw Knox Equipment grating plant in Jackson, Mississippi.

155. In January 1988, WCI released the lien on the Blaw Knox facility in Blaw Knox, Pennsylvania. (3/14/97 Tr. 76:13-16, 86:1-87:9 Elliott)

156. Ultimately, WCI released the lien on the Warwood facility. (3/14/97 Tr. 76:13-16, 86:1-87:9 Elliott)

157. Based on our review of the evidence, we find that WC released its liens on the BK Businesses, thereby permitting BKC to liquidate these businesses, so BKC could survive for five years. (3/14/97 Tr. 76:13-16, 86:1-87:9 Elliott)

II. Conclusions Of Law

A. Count One - Sham Transaction Under Section 1362

Count One of PBGC's amended complaint alleges that the sale to BKC was a sham transaction designed to avoid pension liability. PB argues, therefore, that the sale should be disregarded and WCI shou be held liable for the pension liabilities under Section 1362[5] as t employer on the date the plans terminated.[6]

The Third Circuit has defined a sham transaction as "one that 'is fictitious or . . . has no business purpose or economic effect.

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[5] Section 1362 reads in relevant part:

> **Liability for termination of single-employer plans under a distress termination or a termination by corporation**
>
> (a) **In general**
>
> In any case in which a single-employer plan is terminated in a distress termination under section 1341(c) of this title or a termination otherwise instituted by the corporation under section 1342 of this title, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. . . .

29 U.S.C. Section 1362.

[6] PBGC's amended complaint asserted two independent theories of liability under Section 1362, the sham transaction doctrine at Coun One and the implicit predecessor liability rule, as recognized in I re Consol. Litig. Concerning Int'l Harvester's Disposition of Wis. Steel, 681 F.Supp. 512 (N.D. Ill. 1988), at Count Three. As we discuss infra, the Third Circuit dismissed Count Three based on its conclusion that Section 1369 now specifically governs predecessor liability, making it improper to apply the implicit predecessor liability rule of International Harvester.

PBGC v. WCI, 998 F.2d at 1201 (quoting Lerman v. Commissioner of Internal Revenue, 939 F.2d 44, 53 (3d Cir. 1991) (quoting DeMartino v. Commissioner of Internal Revenue, 862 F.2d 400, 406 (2d Cir. 1988))). The Court noted that "[t]he sham transaction doctrine, originally developed in the context of tax cases, dictates that the substance and not the form of a transaction controls the tax consequences triggered by an event." PBGC v. WCI, 998 F.2d at 1201 (citing Diedrich v. Commissioner of Internal Revenue, 457 U.S. 191, 196 (1982); Knetsch v. United States, 364 U.S. 361, 367 (1960)).

The exact meaning and practical application of this definition has been the subject of much debate among the parties. Citing to Gregory v. Helvering, 293 U.S. 465 (1935), one of the originating cases of the sham transaction doctrine, PBGC argued on its previous appeal that a transaction may qualify as a sham even if it has a purpose and effect in addition to tax avoidance.[7] PBGC contended

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[7] In Gregory, the taxpayer was the sole shareholder of Corporation A, which held some shares of Corporation B. The taxpayer wanted to transfer the shares of Corporation B to herself, and sell them for a profit. If Corporation A distributed the shares to the taxpayer as a dividend, their value would be taxable as ordinary income. To achieve the same result but receive preferential capital gain tax treatment, the taxpayer formed Corporation C, to receive the shares and then dissolve. Upon dissolution, Corporation C distributed its only asset, the Corporation B shares, to the taxpayer. The taxpayer argued that the transaction should be treated as a corporate reorganization. The Supreme Court held that the transaction was a sham and should be ignored to calculate

(continued...)

that the transaction in Gregory had dual objectives, to obtain personal profit from the sale of stock and to avoid personal income tax, yet the Supreme Court held that it was a sham. PBGC v. WCI, 9 F.2d at 1201. WCI argued in response that a transaction that is ev partially motivated by a legitimate business purpose, such as a desire to dispose of an unprofitable business, does not qualify as sham.

The Third Circuit concluded that its definition of a sham transaction was consistent with Gregory because in that case, the Supreme Court held that "'the sole object and accomplishment of [th transaction] was the consummation of a preconceived plan, not to reorganize a business or any part of a business, but to transfer a parcel of corporate shares to the petitioner.'" PBGC v. WCI, 998 F.2d at 1202 (quoting Gregory, 293 U.S. at 469). The Court concluded, therefore, that the structure of the transaction in Gregory - "the creation of Corporation C and the elaborate indirect method utilized to move the shares from Corporation A to the taxpay - accomplished nothing other than tax avoidance." PBGC v. WCI, 998 F.2d at 1202.

The Court stated that PBGC had acknowledged that BKC had been

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[7](...continued)
the resulting income tax.

PBGC v. WCI, 998 F.2d at 1201 (citing Gregory, 293 U.S. at 469).

losing a significant amount of money each year and that "[d]isposin of an unprofitable operation is a legitimate business purpose." Id The Court noted, however, that it was unclear from the pleadings whether disposing of operating losses was a factor in WCI's decisio to sell the BK Businesses and accompanying BK Plans. Id. The Cour reversed the district court's dismissal of PBGC's sham transaction claim because PBGC had asserted in its amended complaint that "WCI was motivated solely by a desire to be relieved of pension liabilities. . . ." Id.

Other than providing a blanket definition and a brief recitation of Gregory's facts, the Third Circuit provided little guidance as to the practical application of the sham transaction doctrine. WCI argues that the rule to be taken from the Court's decision is that as long as a desire to dispose of unprofitable operations played some role, no matter how small, in WCI's decision to sell the BK Businesses and divest itself of the BK Plans, the WC BKC transaction cannot be considered a sham because it would not ha been motivated solely by a desire to shed pension liabilities. We disagree.

Although the Third Circuit has not applied the sham transactio doctrine in the context of an ERISA case, the Court relied on the t case definition when defining the doctrine for the instant action. The Court most recently applied the doctrine in ACM Partnership v.

Commissioner of Internal Revenue, 157 F.3d 231 (3d Cir. 1998). In ACM, the Court reviewed a Tax Court decision disallowing Appellant ACM's recognition of a large capital loss which the Tax Court had characterized as a "phantom loss from a transaction that lacks economic substance." 157 F.3d at 245. The Court recognized that even though ACM's activities satisfied the literal requirements of the pertinent statutory language, the relevant inquiry was whether the substance of ACM's transaction was consistent with its form. I at 246.

The Court explained that,

> pursuant to Gregory, we must "look beyond the form of [the] transaction" to determine whether it has the "economic substance that [its] form represents," Kirkman v. Commissioner, 862 F.2d 1486, 1490 (11th Cir. 1989), because regardless of its form, a transaction that is "devoid of economic substance" must be disregarded for tax purposes and "cannot be the basis for a deductible loss." Lerman, 939 F.2d at 45; accord United States v. Wexler, 31 F.3d 117, 122 (3d Cir. 1994).
>
> In applying these principles, we must view the transactions "as a whole, and each step, from the commencement . . . to the consummation . . . is relevant." Weller v. Commissioner, 270 F.2d 294, 297 (3d Cir. 1959); accord Commissioner v. Court Holding Co., 324 U.S. 331, 334, 65 S.Ct. 707, 708, 89 L.Ed. 981 (1945). The inquiry into whether the taxpayer's transactions had sufficient economic substance to be respected for tax purposes turns on both the "objective economic substance of the transaction" and the "subjective business motivation" behind them. Casebeer v. Commissioner, 909 F.2d 1360, 1363 (9th Cir. 1990); accord Lerman, 939 F.2d at 53-54 (noting that sham transaction has been defined as a transaction that "has no business purpose or economic effect other than the creation of tax deductions" and holding that taxpayer was not entitled "to claim 'losses' when none in fact were sustained"). However, these

> distinct aspects of the economic sham inquiry do not constitute discrete prongs of a "rigid two-step analysis," but rather represent related factors both of which inform the analysis of whether the transaction had sufficient substance, apart from its tax consequences, to be respected for tax purposes. Casebeer, 909 F.2d at 1363; accord James v. Commissioner, 899 F.2d 905 , 908-09 (10th Cir. 1990); Rose v. Commissioner, 868 F.2d 851, 854 (6th Cir. 1989).

ACM, 157 F.3d at 247.

1. Objective Economic Substance

When assessing the economic substance of a taxpayer's transaction, "courts have examined whether the transaction has any practical economic effects other than the creation of income tax losses and refused to recognize the tax consequences of transaction that were devoid of nontax substance because they did not appreciab affect the taxpayer's beneficial interest except to reduce his tax. ACM, 157 F.3d at 248 (quotations omitted). When the transaction at issue involves the disposition of property, the Third Circuit noted the following:

> In the context of property dispositions, the courts have applied the economic substance doctrine in a similar manner to disregard transactions which, although involving actual transactions disposing of property at a loss, had no net economic effect on the taxpayer's economic position, either because the taxpayer retained the opportunity to reacquire the property at the same price, or because the taxpayer offset the economic effect of the disposition by acquiring assets virtually identical to those relinquished. See, e.g., Lerman, 939 F.2d at 48; Merryman v. Commissioner, 873 F.2d 879 (5th Cir. 1989); Kirchman, 862 F.2d at 1488, 1492-93; Yosha v. Commissioner, 861 F.2d 494, 501 (7th Cir. 1988). Although the taxpayers in these cases actually and objectively

> disposed of their property, the courts examined the dispositions in their broader economic context and refused to recognize them for tax purposes where other aspects of the taxpayers' transactions offset the consequences of the disposition, resulting in no net change in the taxpayer's economic position.

ACM, 157 F.3d at 249. In the context of the instant case, therefor we must consider whether the WCI-BKC transaction had any practical economic effect other than the shifting of pension liabilities when examining the transaction in its broader economic context.

With the exception of Merryman v. Commissioner, 873 F.2d 879 (5th Cir. 1989), each of the cases the Court cites in ACM as an example of taxpayer transactions that have been found to be lacking in economic substance involve a unique transaction engaged in on various commodity exchanges, the option-straddle transaction. See Lerman, 939 F.2d at 48; Kirchman, 862 F.2d 1486; Yosha, 861 F.2d 49 (all finding that option-straddle transactions lacked economic substance). Similarly, the transaction in ACM involved the purchas of private placement notes with an almost immediate exchange for payment installment notes.

Merryman, on the other hand, involved a partnership which was formed to operate an oil rig sold to it by a corporation. The Cour concluded that the partnership lacked economic substance and refuse to recognize it for tax purposes. In reaching its conclusion, the Court noted that the corporation from which the partnership receive the oil rig was also the managing partner of the corporation; that

the day of its formation, the partnership purchased the rig from th corporation and simultaneously entered into a management agreement whereby it surrendered control of the rig to the corporation; the partners failed to make required capital contributions; despite a substantial purchase price of $2,250,000 for the rig, a promissory note was executed for the entire amount with no required down payment; throughout the partnership's existence, money flowed back and forth, but the economic positions of the parties was not altere in that the corporation operated rig, collected revenue, remitted revenue to partnership which was returned to the corporation in the form of note payments; the partnership had no office or employees, paid no salaries, and carried on no other business; and the partnership and corporation failed to follow the terms of both the management agreement and sales contract. Merryman, 873 F.2d at 882 83.

When compared to the instant case, Merryman presents a sharper example of a transaction which lacks economic substance. However, the cases have some important similarities. At the time o the transaction, WCI was aware of the International Harvester case and the then proposed Section 1369, whereby a seller would have contingent liability for a failed pension plan for a five year peri following the sale of assets and transfer of pension liabilities.

(FF 87)[8] This awareness is reflected in the WCI-BKC Agreement whic focuses primarily on insulating WCI from any potential liability associated with the transferred BK Plans by reducing the likelihood of BKC failing or the BK Plans terminating in the first five years after the sale.

For example, WCI was to pay BKC $4 million a year for five years which was designated under an irrevocable assignment to go to the pension trusts (FF 71(e)); BKC was to obtain a letter of credit in favor of WCI which could be drawn on by WCI if PBGC threatened t terminate the BK Plans or if BKC went into bankruptcy (FF 71(g)); $ million of the $20 million WCI paid at closing was paid to Ameritru to purchase the letter of credit and the letter of credit was to be incrementally released over a five year period (FF 71(g) and (q)); BKC had to contribute to the BK Plans for five years to satisfy the minimum funding required by ERISA and the various plan documents bu in no event could contributions be less than $1.2 million (FF 71(l) if an overfunded plan terminated within six years, BKC had to use t excess funds to reduce unfunded liabilities in underfunded plans (F 71(n)); BKC and WCI entered into a security agreement with WCI whic granted WCI a security interest in all of BKC's assets (FF 71(s)); BKC would be in default of the security agreement if a claim arisin from the BK Plans was made against WCI or if PBGC or BKC initiated

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[8] The court's Finding of Facts are cited as (FF x).

plan termination. (FF 71(s)).

The structure of the WCI-BKC Agreement, the drafting of which was controlled by WCI, takes on added significance when considering the financial health of BKC. WCI could not have reasonably expecte BKC to survive after the fifth year. BKC was insolvent at the time of closing (FF 110) and had just enough cash, with WCI's $4 million year payments, to make it through five years. (FF 117)

Also, BKC was structured so that no one, including Tomsich, wa at risk. Tomsich intentionally limited his ownership interest in B to 78 percent, which insulated him and his principal business, NESC from the pension liabilities. (FF 50) Moreover, Tomsich's buying group contributed a mere $1,000,000 to BKC's equity, barely twice t costs associated with the $450,000 needed to create the Ameritrust agreements. (FF 95) In sum, WCI's transfer of the BK Businesses a BK Plans to BKC, an economic shell that WCI could not have reasonab expected to survive beyond five years, while structuring the transaction to keep BKC afloat for five years, indicates a transaction which lacks economic substance other than the shifting pension liabilities.

Other aspects of the Agreement also indicate a transaction lacking in economic substance. WCI was in many ways in the same position for the first five years after the sale as it was prior to the WCI-BKC transaction. For example, WCI still retained control

over the disposition of BKC's assets and was still required to make significant pension contributions. If BKC failed within this five year period, substantially all of BKC's assets would revert back to WCI.

The parties' failure to adhere to the WCI-BKC Agreement is another indication that the transaction lacks economic substance. See ACM, 873 F.2d at 881 ("The low degree of adherence to the entities' contractual terms indicates lack of substance."). For example, BKC was required to contribute a total of $29.6 million under the WCI-BKC Agreement for plan years 1985 through 1990 but it only contributed $12.7 million during this period. WCI also gradually released its liens on BKC's assets over the five-year period despite BKC's continued decline. Having heard the evidence, we find that WCI released its liens on BKC's assets so that BKC cou liquidate its assets and limp along for five years.

Although there are several indicators that the transaction lacks economic substance, we recognize that there were other aspect of the deal that had economic substance other than the shifting of pension liabilities, such as getting rid of operating losses. Also the parties did effectuate a transfer of the BK Businesses' assets a non-related corporation even though WCI retained significant control over the disposition of such assets. Thus, we cannot conclude that the transaction fully satisfies the first prong of th

analysis as the transaction had some economic substance other than the shifting of pension liabilities.

2. Subjective Business Motivation

Next, we examine the subjective business motivation behind the WCI-BKC transaction. WCI contends that it sold the BK Businesses because they were unprofitable and not part of their core business. WCI further contends that it structured the WCI-BKC Agreement the w it did because the assumption of pension liabilities was the consideration BKC gave in the transaction. Therefore, WCI wanted t be sure that it did not pay for the pension liabilities twice by having them revert back to it.

There is ample evidence which indicates that WCI's initial motivation for selling the BK Businesses was to rid itself of unprofitable businesses. For example, the BK Businesses had been losing money in recent years. (FF 10) WCI hired McKinsey to condu a strategic study to evaluate the impact of the BK Businesses on th value of WCI. (FF 14) McKinsey categorized the BK Businesses as Exit Businesses and recommended that they be sold. (FF 15) WCI the retained Lehman Brothers to find a buyer for the BK Businesses. (F 29)

Lehman Brothers shopped the BK Businesses with the understanding that the BK Businesses would be sold for cash with WC retaining the pension liabilities. (FF 30) After shopping the BK

Businesses for over a year, Lehman Brothers identified only one potential purchaser, Cvengros. (FF 30) Cvengros proposed a deal whereby he would receive a cash payment and assume the pension liabilities in exchange for the BK Businesses' assets. (FF 38) Cvengros then planned on terminating the pension plans either immediately before or after closing. (FF 38)

The evidence indicates that WCI's motivations began to shift around this time. WCI was aware that it could be liable for the pension liabilities under the theories advanced by PBGC in International Harvester. (FF 39) Because the termination of the B Plans would create a significant risk to WCI, WCI's legal counsel, Ransom, advised WCI that it should not construct a deal in which th buyer was to terminate the BK Plans as part of the transaction. (F 40) Around the same time, WCI identified Tomsich as a potential purchaser who might be convinced to enter into a deal more favorabl than Cvengros' proposal. (FF 43)

WCI then sent Tomsich and Cvengros two proposed letters of intent. Version #1 provided for the purchase of the BK Businesses through the assumption of liabilities with terms substantially different from the Cvengros deal. (FF 47) Version #2 proposed a purchase of the BK Business's assets for a cash payment of an undisclosed amount. (FF 47) Tomsich and his advisors concluded th the buyer was being asked to assume approximately $67 million in

pension liabilities in Version #1. (FF 48) Although Version #2 di not specify an amount of cash consideration, there is evidence that Tomsich thought that the assets were worth approximately $20 millio and that the expected purchase price was very high and substantiall above the book value and net worth of the BK Businesses. (FF 48) Tomsich chose Version #1 knowing that as long as he owned only 78% the stock of BKC neither he personally nor his company NESCO would liable for the pension liabilities. (FF 51)

WCI began to focus on the savings that could be realized on th deal where the buyer would assume the pension liabilities. In a Ju 18, 1995 memorandum, Hunt and Elliot compared the scenario where WC would retain the pension plans versus the Tomsich deal and recogniz that the "principal economic benefit" to WCI under the Tomsich plan was the assumption of pension liabilities by the buyer. (FF 72-73) They compared, for example, the cost to WCI of doing the Tomsich de with the reserves established at year end 1984 for discontinuing operations of the BK Businesses. (FF 72) The analysis showed that WCI saved $68 million, the largest portion of which would be saving on the pension liabilities, by doing the Tomsich deal as compared with the disposition accounted for in the discontinued operations reserve. (FF 72)

Hunt and Elliot also compared the cash flows under the two scenarios. WCI had estimated that it would have to pay out $184

million over 30 years, if it kept all the obligations for retiree benefits in connection with BK Businesses after a cash payment of $32.5 million in proceeds. (FF 74) Under the proposed Tomsich dea however, WCI would have to pay out only $25 million relating to the BK Plans. (FF 74)

Hunt and Elliot also stated, however, that the economic benefi of the deal outweighed the risk. (FF 75) They included calculatio which showed that WCI would be in substantially the same position o a cash flow basis if the buyer failed within the first seven years after the sale and WCI ended up paying the transferred retiree liabilities. (FF 75) Around the same time, WCI also prepared an analysis that compared the Tomsich deal and a cash sale "as is, whe is" to estimates recorded in the discontinued operations reserve. (FF 76) The analysis showed that if WCI kept the liabilities and sold the assets of the BK Businesses "as is" for $47.4 million, WCI would save $30.7 million over the discontinued operations reserve which was less than half of the $67.6 million economic benefit produced by the Tomsich deal. (FF 76) WCI's Board of Directors ultimately approved the Tomsich deal as presented in the proposed letter of intent so long as the final agreement did not reflect mor than a $10 million adverse variance from the projected $68 million savings from the originally booked pre-tax loss. (FF 80)

During the negotiations with Cvengros and Tomsich, WCI had its

actuaries at Wyatt recalculate the estimated unfunded liabilities associated with the BK Plans. (FF 57) Wyatt's recalculated number for the negotiations were unreasonable and substantially less than its pre-negotiation numbers. (FF 65) As we have already discussed WCI then proceeded to transfer the BK Plans to an entity that it could not have reasonably believed could survive on its own under t weight of the pension liabilities. With International Harvester in mind, however, WCI then structured the WCI-BKC Agreement to keep BK alive for five years.

We find, based on this evidence, that although WCI's initial intent was to sell the BK Businesses to get rid of unprofitable operations, it ultimately became solely motivated by a desire to unload the BK Plans. When considering WCI's subjective intent in conjunction with the economic substance of the transaction, we conclude that the WCI-BKC Sale was a sham, as the transaction did n have sufficient substance apart from the shifting of pension liabilities.

Accordingly, we find in favor of PBGC on Count One of the Amended Complaint.

B. Count Four - Principal Purpose to Evade Under Section 136

Count Four of PBGC's amended complaint alleges that a principa purpose of WCI's decision to consummate the WCI-BKC sale was to eva pension liabilities. PBGC argues, therefore, that the sale should

disregarded and WCI should be held liable for the pension liabiliti under Section 1369[9] as the employer on the date the plans terminate

WCI denies that the evading of pension liabilities ever played a role in its decision to sell the BK Businesses and accompanying B Plans. In any event, WCI argues, Section 1369 does not apply in th instant case because the WCI-BKC sale closed in September 1985, approximately three months prior to Section 1369's January 1, 1986 effective date. We will first address the issue regarding Section 1369's effective date.

1) Section 1369's Effective Date

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[9] Section 1369 reads in pertinent part:

> **Treatment of transactions to evade liability; corporate reorganization**
>
> (a) **Treatment of transactions to evade liability**
>
> If a principal purpose of any person in entering into any transaction is to evade liability to which such person would be subject under this subtitle and the transaction becomes effective within five years before the termination date of the termination on which such liability would be based, then such person and the members of such person's controlled group (determined as of the termination date) shall be subject to liability under this subtitle in connection with such termination as if such person were a contributing sponsor of the terminated plan as of the termination date. This subsection shall not cause any person to be liable under this subtitle in connection with such plan termination for any increases or improvements in the benefits provided under the plan which are adopted after the date on which the transaction referred to in the preceding sentence becomes effective.

29 U.S.C. Section 1369(a).

The Court of Appeals for the Third Circuit concluded that Section 1369 applies to the WCI-BKC sale holding that "a transactio does not become effective for purposes of section 1369 until the company that transferred a pension plan no longer makes substantial pension contributions." PBGC v. WCI, 998 F.2d at 1199. The Court noted that "[o]nly then is the financial strength of the new employ tested. If the new employer, primarily on its own, is able to sustain the pension obligations for five years, then section 1369 immunizes the previous employer from ERISA liability." Id. The Court went on to conclude that

> Section 1369 applies "with respect to transactions becoming effective on or after January 1, 1986." Pub.L. No. 99-272 § 11013(b), 100 Stat. 82, 261 (1985). Since we hold that the transaction did not become effective until WCI made the last pension contribution in 1990, section 1369 is applicable to this transaction.

Id. at 1199 n.2.

WCI contends that the Third Circuit improperly ruled that Section 1369 applies to the WCI-BKC sale because the sale closed prior to the statute's January 1, 1986 effective date. Citing to Landgraf v. USI Film Prods., 114 S.Ct. 1483 (1994), a decision issu after the Third Circuit's ruling in this case, WCI insists that the must be clear evidence of Congressional intent to apply a statute retroactively. WCI maintains that there is no clear evidence that Congress intended Section 1369 to be retroactively applied.

More specifically, WCI contends that there is a distinction in

the phrase "becomes effective", which appears in Section 1369's tex and the phrase "becoming effective", which appears in the statute's stated effective date. WCI maintains that the phrase appearing in the Section 1369's text, "becomes effective", is part of the langua which sets forth the statute's five-year safe harbor provision. WC contends that the Third Circuit assumed, without analysis, that its interpretation of the effective date of the transaction for applyin Section 1369's five-year safe harbor provision also properly established the effective date of the WCI-BKC sale for determining whether Section 1369 could be retroactively applied to the sale. Thus, WCI argues, the Third Circuit never considered whether there was clear evidence that Congress intended Section 1369 to apply to transaction, like the WCI-BKC sale, which closed prior to January 1 1986.

PBGC argues in response that the Third Circuit has already ruled that Section 1369 applies to the WCI-BKC sale, therefore, WCI argument is foreclosed by the law of the case doctrine.

Law of the case rules function to maintain consistency and avoid reconsideration of matters once decided during the course of single continuing lawsuit. Although commonly labeled the law of th case doctrine, the rules apply to at least four distinctive situations, (1) a single court adhering to its own prior ruling; (one judge or court adhering to the rulings of another judge or cour

in the same case or closely related cases; (3) a court adhering to the rulings of a higher court; and (4) failure to appeal an issue o to preserve it for appeal. See 18 Charles Alan Wright, et. al., Federal Practice and Procedure, Section 4478 (1981 & 1998 Supp.) (collecting cases). The instant case falls within the third category.

The Third Circuit has explained the district court's duty on a remand for further proceedings as follows:

> It is axiomatic that on remand for further proceedings after decision by an appellate court, the trial court must proceed with the mandate and the law of the case as established on appeal. A trial court must implement both the letter and spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces. "Where the reviewing court in its mandate prescribes that the court shall proceed in accordance with the opinion of the reviewing court, such pronouncement operates to make the opinion a part of the mandate as completely as though the opinion had been set out at length."

Blasband v. Rales, 979 F.2d 324 (3d Cir. 1992) (quoting Bankers Tru Co. v. Bethlehem Steel Corp., 761 F.2d 943, 949 (3d Cir. 1985 (citations omitted)); see Delgrosso v. Spang & Co., 903 F.2d 234, 2 (3d Cir. 1990) ("When an appellate court directs the district court to act in accordance with the appellate opinion . . . the opinion becomes part of the mandate and must be considered together with it (citation omitted)).

The Third Circuit quoted Section 1369's effective date provision and specifically held that Section 1369 was applicable to

the WCI-BKC sale. PBGC v. WCI, 998 F.2d at 1199 n.2. The Court th remanded the action to the district court "for further proceedings consistent with [its] opinion." Id. at 1202. Therefore, we are bound by the Third Circuit's ruling that Section 1369 is applicable to the WCI-BKC sale.[10]

Even so, WCI argues that Landgraf constitutes an intervening change in the law which allows the court to revisit the issue of Section 1369's effective date.

There is disagreement as to whether a lower court may depart from an appellate court's mandate, without the appellate court's permission, on the grounds that an intervening change in the law requires reexamination of issues already decided. See 18 Charles Alan Wright, et. al., Federal Practice and Procedure, Section 4478

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[10] Although WCI is correct in that the Third Circuit provided little explanation for its decision, the absence of court analysis would not permit a district court to disregard a ruling already mad by its court of appeals. We note, however, that the Third Circuit stated its ruling on Section 1369's effective date after having engaged in an extensive analysis of whether the WCI-BKC sale became effective within the statute's five-year safe harbor provision. As part of its analysis, the Court referenced the facts relevant to th effective date issue recognizing, for example, that "WCI and Blaw Knox clearly entered into this transaction on September 27, 1985, t day the deal closed." PBGC v. WCI, 998 F.2d at 1198. Moreover, WC apparently argued in its brief to the Third Circuit that "WCI is no subject to any liability as a predecessor sponsor under section 406 of ERISA, 29 U.S.C. Section 1369, because WCI sold the Blaw Knox Businesses and transferred sponsorship of the Plans covering their employees prior to the January 1, 1986 effective date of that statute. . . ." PBGC's Surreply To WCI's Reply Brief (Doc. No. 200 at p. 1. Thus, it appears that the Third Circuit was aware of the issue and the relevant facts at the time it rendered its decision.

(1981 & 1998 Supp.) (collecting cases). We need not resolve this issue, however, as Landgraf did not constitute an intervening chang in the law.

As PBGC correctly points out, the Supreme Court stated in Landgraf that its standards for retroactive application of new legislation had been in place "[s]ince the early days of the Court. 114 S.Ct. at 1499. The Court stated that although there was an apparent tension between its holding in Bradley v. School Bd. of Ci of Richmond, 416 U.S. 696 (1974), that "a court is to apply the law in effect at the time it renders its decision," and its holding in Bowen v. Georgetown Univ. Hosp., 488 U.S. 204 (1988), that "congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result," there is no tension between these holdings both of which were unanimous decisions. Id. at 1496. The Court explained that "the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centurie older than our Republic." Id.

Accordingly, we find that Section 1369 applies to the WCI-BKC sale.[11]

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[11] PBGC also argues that WCI has waived its right to assert this argument because it is more in the nature of an affirmative defense which was raised for the first time at trial. We need not address this argument as we have already held that under the law of the cas

(continued...)

2) Liability Under Section 1369

PBGC and WCI disagree as to what is the appropriate standard o liability under Section 1369. PBGC argues that the determination o whether a principal purpose of a transaction was to evade pension liabilities is an objective substance-over-form analysis with no consideration being given to subjective intent. WCI argues, on the other hand, that the test is one of subjective intent, as a person must have the subjective intent to evade pension liabilities at the time a challenged transaction was entered into. We believe that th test is comprised of both an objective and subjective component.

To determine whether a predecessor employer such as WCI had "a principal purpose" to evade its pension obligations under Section 1369, the Third Circuit held that the court must "analyze intent at the time the parties 'enter[] into' the challenged transaction." PBGC v. WCI, 998 F.2d at 1199. As the court discussed, prior to th enactment of Section 1369, the Northern District of Illinois had he in International Harvester that a "predecessor employer is liable when it transfers a pension plan that later terminates when: (1) th employer intended to evade pension obligations; and (2) objectively the transferee, that assumed responsibility for the plan had economically little chance to succeed." PBGC v. WCI, 998 F.2d at

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[11](...continued)
doctrine we must follow the Third Circuit's ruling that Section 136 applies to the WCI-BKC sale.

1199 (citing International Harvester, 681 F.Supp. at 525-27). According to the Third Circuit, "by enacting section 1369, Congress codified the [International] Harvester predecessor liability test . . with one change." PBGC v. WCI, 998 F.2d at 1199 (internal citati omitted). The court concluded that Congress had replaced the secon prong of the International Harvester test with a bright line five-year test as an "easily quantifiable surrogate" for economic viability. Id. The court explained that Congress intended to both broaden the International Harvester predecessor liability rule and create a safe harbor for a predecessor employer when the new employ survives on its own for five years. Id.

> Congress apparently believed that if a plan terminated within five years of being transferred, it was fair to assume that the new employer did not have reasonable chance of succeeding at the time of transfer. Congress also believed that if a plan remained viable for five years under a new sponsor, the previous employer should have the benefit of an irrebuttable presumption that the new sponsor had a reasonable chance of fulfilling the pension obligations it assumed.

Id.

The court went on to hold that "if a transferor makes substantial post-sale contributions to a pension plan to ensure its viability for five years, however, the plan's existence after five years does not reflect the transferee's economic stability at the time of the transfer." Id. Therefore, "a transaction does not become effective for purposes of section 1369 until the company tha

transferred a pension plan no longer makes substantial pension contributions. Only then is the financial strength of the new employer tested." Id.

Although the Third Circuit focused primarily on Section 1369's change to the objective prong of the International Harvester test, the subjective first prong of the test remained intact. This resul is consistent with International Harvester's holding that predecess liability "requires proof of two elements, one subjective and one objective. An employer who, with a sale of his business, delegates his pension obligations is liable if a principal purpose of the sal is to evade pension liability and if, objectively, his buyer lacks reasonable chance of meeting those obligations." 681 F.Supp. at 52 See also, Santa Fe Pacific Corp. v. Central States, Southeast and Southwest Areas Pension Fund, 1993 WL 68074 at *2 (N.D. Ill., Mar. 10, 1993) (examining evidence of subjective intent to evade for purposes of liability under 29 U.S.C. Section 1392).

Thus, we find that the determination of whether a principal purpose of a transaction was to evade pension liabilities pursuant Section 1369, should proceed according to the following steps. The first step is an objective analysis which requires the court to mak an initial determination of whether a transferred plan remained viable for five years under a new sponsor, beginning from the time that the predecessor sponsor no longer makes substantial pension

contributions. If the answer is yes, the analysis ends here and no liability may be imposed upon the predecessor sponsor. If the plan do terminate within a five year period, the court must determine on an objective basis whether the new sponsor lacked a reasonable chan of meeting the pension obligations. The court must then examine th predecessor sponsor's subjective intent at the time of entering int the transaction and determine whether a principal purpose of enteri into the transaction was to evade pension obligations. See International Harvester, 681 F.Supp. at 526 (court rejected wholly objective standard argued for by PBGC which would hold a predecesso employer liable for unfunded pension benefits regardless of whether there was an intent to evade if a reasonably informed employer woul have known that the new employer did not have reasonable chance of paying for them). If a principal purpose of entering into the transaction was to evade pension obligations and the new sponsor lacked a reasonable chance of survival, then the predecessor sponso is liable for the terminated plans.

WCI does not dispute that the safe harbor provision does not apply here as the BK Plans terminated within five years of Septembe 1990 when WCI made its last substantial contribution. See PBGC v. WCI, 998 F.2d at 1200 ("We need not define precisely what constitut substantial contribution by a predecessor employer. In this case, after WCI transferred the pension plans to Blaw Knox, the amended

complaint alleges that WCI made annual payments of four million dollars to the plans, while Blaw Knox contributed only $1.2 million annually. This is clearly substantial support from the transferor. Thus, we consider whether objectively BKC had little chance to succeed.

Having reviewed all the evidence, we think it clear that BKC had little to no chance to succeed after the fifth year when WCI's million annual payments would cease. (FF 117) For example, BKC wa materially insolvent at the time of the sale and its capital structure was insufficient to withstand a reasonably likely economi downturn. (FF 110, 118) In 1991, the first year in which WCI did n contribute to the pension, the cash flow of BKC would be negative. (FF 117) PBGC's expert, Professor Jarrell, demonstrated that the analysis of WCI's expert, Dr. Stillman, showed that BKC was insolve by at least $34 million by mid-1987. (FF 119)

Next, we must consider WCI's intent at the time of entering into the WCI-BKC transaction and determine whether a principal purpose of entering into the transaction was to evade pension obligations. As set forth in our analysis of PBGC's sham transacti claim at Count One, we find that WCI ultimately became solely motivated by a desire to unload the BK Plans. This finding also supports a conclusion that a principal purpose of WCI in entering

into the transaction was to evade pension liabilities.[12] We need nc repeat that analysis here.

In sum, after having heard all the evidence, we find that a principal purpose in WCI's decision to enter into the WCI-BKC transaction was to evade pension liability and that BKC had economically little chance to succeed. Accordingly, we find in fav of PBGC on Count Four of the Amended Complaint.[13]

C. Determination of Amount and Collection of Liability

An issue arose during the trial regarding the calculation of the amount of liability in the event PBGC were to prevail on either of its claims. WCI contends that the court must determine the amou of liability, if any, in these proceedings. We disagree.

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[12] WCI contends that a principal purpose means that evading pension liabilities had to be its first, chief, or primary purpose. PBGC argues, however, that evading pension liabilities need only be major, weighty, or important purpose in WCI's decision to enter int the WCI-BKC transaction. We need not decide this issue as our finding that WCI ultimately became solely motivated by a desire to unload the BK Plans also supports a finding that evading pension liabilities was WCI's first, chief, or primary purpose in entering into the transaction.

[13] PBGC's amended complaint asserted two independent theories of liability under Section 1362, the sham transaction doctrine at Coun One and the implicit predecessor liability rule, as recognized in International Harvester, at Count Three. The Third Circuit dismiss Count Three based on its conclusion that Section 1369 now specifically governs predecessor liability making it improper to apply the implicit predecessor liability rule of International Harvester. PBGC v. WCI, 998 F.2d at 1200. We note, however, that the facts of this case would clearly support a finding against WCI under International Harvester's implicit predecessor liability rule

PBGC correctly argues that Subsection (b) of Section 1362 give PBGC the authority to determine and collect the liability that aris automatically upon termination of an unfunded pension plan ("termination liability") without first having to go to court. See PBGC's Bench Memorandum On Determination And Collection Of Liabilit Under Section 1369 ("PBGC's Mem. on Liab.")(Doc. No. 183). The applicable rules are no different when termination liability arises under Section 1369. 29 U.S.C. Section 1369(a) ("If a principal purpose of any person in entering into any transaction is to evade liability . . . under this subtitle . . . then such person . . . shall be subject to liability under this subtitle . . . as if such person where a contributing sponsor of the terminated plan as of th termination date.").

The termination liability of a "contributing sponsor of the plan" is defined in 29 U.S.C. Section 1362(b) as "the total amount the unfunded benefit liabilities (as of the termination date) to al participants and beneficiaries under the plan, together with intere (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation." Such liability "shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation," 29 U.S.C. Section 1362(b)(2)(A), although PBGC "and a person liable under this section may agree to alternative

arrangements for the satisfaction of liability. . . ." 29 U.S.C. Section 1362(b)(3).

PBGC's regulations provide for the procedures that must be followed when determining and collecting termination liability from contributing sponsors and their controlled group members. For example, "when the PBGC has determined the amount of the liability under part 4062 . . ., [it] shall notify liable person(s) in writin of the amount of the liability . . . [and] include a request for payment." 29 C.F.R. Section 4068.3. The request for payment is an initial determination of the agency subject to administrative revie under 29 C.F.R. Part 4003, which applies by its terms to PBGC's "[d]eterminations of the amount of liability under section 4062(b)(. . . of ERISA." 29 C.F.R. Section 4003.1(9). Only after the administrative appeal process is exhausted does PBGC's determinatio become a final agency action, which can be challenged in court. 29 C.F.R. Section 4003.59.

At this point, PBGC will issue a demand letter for payment of the liability. 29 C.F.R. Section 4068.3(b)(2). Refusal to pay the liability after PBGC issues the demand letter gives rise to a lien favor of PBGC pursuant to 29 U.S.C. Section 1368(a) which states:

> If any person liable to the corporation under section 4062 . . . neglects or refuses to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to

> such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all such persons described in section 4062(a).

See also, 29 C.F.R. Section 4068.4. PBGC may then go to court to enforce its lien or otherwise collect the liability. 29 U.S.C. Section 1368(d)(1), (2).

In sum, the administrative procedures set forth in PBGC's regulations must first be exhausted before either party brings a claim for judicial relief regarding the amount of liability. See e.g., Robinson v. Dalton, 107 F.3d 1018, 1020 (3d Cir. 1997) ("It i a basic tenet of administrative law that a plaintiff must exhaust a required administrative remedies before bringing a claim for judici relief." (citing McKart v. United States, 395 U.S. 185, 193 (1969))

An order consistent with these findings of fact and conclusion of law will be entered.

_____
Date

_____
Robert J. Cindrich
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENSION BENEFIT GUARANTY CORPORATION, Plaintiff, v. WHITE CONSOLIDATED INDUSTRIES INC., Defendant.	)	Civil Action No. 91-1630

O R D E R

In accordance with the accompanying findings of fact and conclusions of law, the court finds in favor of the plaintiff and against the defendant on both Counts One and Four of the Amended Complaint. Accordingly, **JUDGMENT IS GRANTED** in favor of the Pensio Benefit Guaranty Corporation and against White Consolidated Industries Inc. on Counts One and Four of the Amended Complaint.

The parties must first exhaust the administrative procedures set forth in the Pension Benefit Guaranty Corporation's regulations before either party brings a claim for judicial relief regarding th amount of liability.

SO ORDERED this ____ day of July, 1999.

The Clerk is directed to mark this case closed.

_____
ROBERT J. CINDRICH
United States District Judge

cc:

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Exhibit B

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Ingersoll Rand

March 22, 2012

Julie R. Domike
Kilpatrick Townsend
Suite 900
607 14th St., NW
Washington, D.C. 20005-2018

Dear Ms. Domike:

We are in receipt of your letter sent to Mr. Katz of Ingersoll Rand on March 8, 2012, regarding the EPA Request for Information regarding the Blaw-Knox Foundry and Gary Development Landfill.

I am writing in order to respond to your two requests in that letter. First, regarding your request for records related to Blaw-Knox Construction Equipment Corporation and the Blaw-Knox Company, we confirm that in connection with the closing of the Ingersoll Rand/Volvo transaction, Ingersoll Rand provided all books and records in its possession related to those companies as contemplated by Section 2.1(b)(v) of the Asset and Stock Purchase Agreement, dated as of February 27, 2007, among Ingersoll-Rand Company Limited, AB Volvo (Publ) and the other parties named therein.

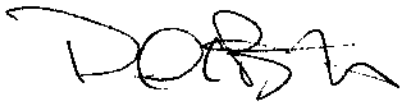
Second, regarding your request for records showing Ingersoll-Rand never owned the Blaw-Knox Foundry, Ingersoll-Rand never maintained any such records. However, we did conduct a search of publicly available information and I am attaching two documents resulting from that search showing that Clark Equipment Company never acquired the Blaw-Knox Foundry (and therefore Ingersoll-Rand and Volvo never acquired it).

The first document is a case from the U.S. District Court for the Western District of Pennsylvania. The first several pages recite how the Blaw-Knox Foundry was purchased by an unrelated party from White Consolidated Industries prior to AB Electrolux acquiring White Consolidated Industries. Accordingly, the Blaw-Knox Foundry was sold to this unrelated party prior to Clark Equipment Company acquiring the road-paving business from AB Electrolux (and therefore prior to Ingersoll Rand acquiring Clark Equipment Company).

The second document I am attaching is the purchase agreement pursuant to which Clark Equipment Company acquired the road-paving business from AB Electrolux. The acquired assets in that purchase agreement do not include the Blaw-Knox Foundry.

I hope the above information is helpful. Please feel free to direct your future inquiries on this matter to me. And lastly, I must note that Ingersoll Rand and its affiliates expressly reserve all of their rights under the Asset and Stock Purchase Agreement referred to in this letter (and any other agreements between Ingersoll Rand and Volvo and their respective affiliates), Ingersoll Rand's and its affiliates' rights under applicable law and any other rights Ingersoll Rand and its affiliates may have.

Very truly yours,



David C. Butow
Deputy General Counsel,
M&A, Finance and Restructuring

Enclosures

Exhibit C

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT dated as of April 20, 1994, by and between WHITE CONSOLIDATED INDUSTRIES, INC. ("WCI"), a Delaware corporation, and CLARK EQUIPMENT COMPANY ("BUYER"), a Delaware corporation.

W I T N E S S E T H :

WHEREAS, WCI is engaged through its wholly-owned subsidiaries, BLAW-KNOX CONSTRUCTION EQUIPMENT CORPORATION, a Delaware corporation ("BK"), WHITE CONSOLIDATED INTERNATIONAL HOLDINGS, LTD, a Delaware company ("WCI-LTD"), and BLAW-KNOX CONSTRUCTION EQUIPMENT CO. LIMITED, a United Kingdom agency company ("BK-LTD", and together with WCI-LTD., "BKL") in the businesses of designing, manufacturing, selling and licensing of the products described in Part 1.00 of the Disclosure Schedule to be delivered by WCI to BUYER prior to the CLOSING (the "SCHEDULE"), a draft of which SCHEDULE is attached hereto, and spare and replacement parts therefor (the "PRODUCTS"), all of which businesses are collectively referred to as the "BUSINESS".

WHEREAS, WCI desires to sell and BUYER desires to purchase all outstanding shares of capital stock of BK (the "SHARES") and certain rights, properties and assets of BKL pertaining to the BUSINESS, all upon the terms and conditions hereof.

WHEREAS, subject to the mutual agreement of WCI and BUYER, the parties may cause the BKL ACQUIRED ASSETS (defined below) to be transferred by a separate agreement, satisfactory to both parties, for a purchase price to be mutually agreed upon by BUYER and WCI, which amount shall accordingly be deducted from the FINAL CASH PRICE referred to in Section 2.1 and the PRELIMINARY CASH PRICE referred to in Sections 2.2, 7.2.8 and 8.3.3.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - SALE OF THE SHARES AND THE BKL ACQUIRED ASSETS

1.1 Sale and Purchase of the Shares and the BKL Acquired Assets. At the CLOSING (as defined in Section 8.1) WCI or BKL shall sell, transfer, assign and deliver (or cause to be so done) to BUYER, and BUYER shall purchase and acquire from WCI or BKL, the SHARES and the ACQUIRED ASSETS (as defined below) of BKL (the "BKL ACQUIRED ASSETS"). The rights, properties and assets used now or in the past in the conduct of the BUSINESS (the "ACQUIRED ASSETS") shall be owned as of the CLOSING by BK or BKL except to the extent that any thereof form a part of the EXCLUDED ASSETS which shall have been transferred at or prior to the CLOSING to WCI or an affiliate (as defined in Section 9.17) of WCI, which ACQUIRED ASSETS shall include, without limitation, the following:

1.1.1 The real properties described in Part 1.1.1 of the SCHEDULE and all interests of WCI and its affiliates in and related to the buildings, structures, fixtures and improvements thereon and all other

appurtenances thereto (the "REAL PROPERTIES").

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1.1.2 The real property leases listed in Part 1.1.2 of the SCHEDULE and all interests of WCI and its affiliates in and related to the fixtures and improvements on the properties covered by such leases and all other appurtenances thereto (the "LEASEHOLDS").

1.1.3 All machinery, equipment, tools, dies, molds, jigs, patterns, gauges and production fixtures, material handling equipment, vehicles (other than leased motor vehicles), business machines, office furniture and office fixtures, and other tangible property, and all related spare and maintenance parts therefor (the "MACHINERY & EQUIPMENT") including, without limitation, those listed in the Fixed Asset Ledgers of BK and BKL included as Part 1.1.3 of the SCHEDULE.

1.1.4 All of the (a) finished goods inventories; (b) replacement and spare and component parts; and (c) raw materials, work in process inventory, operating supplies, packaging and shipping materials (the "INVENTORIES").

1.1.5 (a) The trademarks, service marks, trademark registrations, trade names, copyrights and applications for registration thereof listed in Part 1.1.5(a) of the SCHEDULE (the "TRADEMARKS, SERVICE MARKS, TRADE NAMES & COPYRIGHTS"), subject to outstanding licenses (all of which are listed in Part 1.1.5(b) of the SCHEDULE); and (b) the trademark, service mark, trade name and copyright licenses, whether WCI or any of its affiliates is licensor or licensee thereunder, specified in Part 1.1.5(b) of the SCHEDULE.

1.1.6 (a) The patents and applications for patents listed in Part 1.1.6(a) of the SCHEDULE (the "PATENTS"), subject to outstanding licenses (all of which are listed in Part 1.1.6(b) of the SCHEDULE); and (b) the patent licenses, whether WCI or any of its affiliates is licensor or licensee thereunder, listed in Part 1.1.6(b) of the SCHEDULE. The licenses listed in Parts 1.1.5(b) and 1.1.6(b) of the SCHEDULE are collectively referred to hereinafter as the "LICENSES".

1.1.7 All PRODUCT related drawings (including product and production), designs, specifications and production data.

1.1.8 All books and records of the BUSINESS (including, without limitation, customer lists) located at the REAL PROPERTIES and copies of any other books and records located at other facilities of WCI and its affiliates relating to the BUSINESS subject, however, to the provisions of Sections 5.2.1 and 5.2.5.

1.1.9 Any permits or approvals issued to WCI or its affiliates by any federal, state, foreign, local or other jurisdiction or instrumentality and relating to the BUSINESS, including, without limitation, those listed in Part 1.1.9 of the SCHEDULE (the "PERMITS").

1.1.10 (a) All contracts made or orders given which relate to the purchase of materials, parts, supplies and commodities used in the BUSINESS; (b) all sales orders for PRODUCTS; (c) all leases of machinery and equipment; (d) all dealer, distributor and sales representative agree-

ments relating to the BUSINESS; and (e) all other licenses, agreements, commitments and understandings (collectively the "CONTRACTS").

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1.1.11 As of the CLOSING all trade acceptances and trade accounts and notes receivable (and security interests from third parties relating thereto) of the BUSINESS (the "RECEIVABLES").

1.1.12 Subject to the provisions of Article VI hereof, the rights and entitlements of BK under the Collective Bargaining Agreement included as Part 1.1.12(a) of the SCHEDULE (the "BK COLLECTIVE BARGAINING AGREEMENT") and the rights and entitlement of BKL under the Collective Bargaining Agreement included as Part 1.1.12(b) of the SCHEDULE (the "BKL COLLECTIVE BARGAINING AGREEMENT", and together with the BK COLLECTIVE BARGAINING AGREEMENT, the "COLLECTIVE BARGAINING AGREEMENTS").

1.1.13 All other rights, assets and properties relating to the BUSINESS.

1.1.14 All prepaid items and deferred charges relating to the BUSINESS.

1.1.15 All rights, assets and properties reflected on the CURRENT BALANCE SHEET (as defined in Section 4.1.2(b)) or acquired or manufactured after the date thereof, other than finished goods inventory and scrap materials sold or disposed of in the ordinary course of business after December 31, 1993 and prior to the CLOSING.

1.2 Excluded Assets. Anything hereinabove contained to the contrary notwithstanding, the following rights, properties and assets (the "EXCLUDED ASSETS") shall not be included in the ACQUIRED ASSETS:

1.2.1 As of the CLOSING, all cash, bank balances, monies in possession of any banks and similar cash equivalents, and marketable securities.

1.2.2 All self-insurance programs and all policies of insurance and any return of premiums associated with the cancellation of any such programs or policies.

1.2.3 Any master leases covering motor vehicles.

1.2.4 All intercompany accounts with WCI, its subsidiaries and divisions.

1.2.5 All finished goods inventory and scrap materials reflected on the CURRENT BALANCE SHEET or manufactured after the date thereof which has been sold or disposed of in the ordinary course of business after December 31, 1993 and prior to the CLOSING, and such other properties and assets as may be agreed to in writing by BUYER.

1.2.6 The names "White Consolidated Industries, Inc." or "White", the initials "WCI", the slogan "One of the White Consolidated Industries WCI" or any similar corporate trade name or trademark of WCI.

1.2.7 The capital stock of WCI-LTD and BK-LTD.

1.2.8 The sports field and surplus real estate, both located in the United Kingdom and identified on the survey attached as Part 1.2.8 of the SCHEDULE, and the prepaid insurance items referred to in the target net equity statement attached as Part 1.2.8 of the SCHEDULE.

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1.2.9 Those assets and properties of WCI relating to WCI's supervisory headquarters functions located at 11770 Berea Road, Cleveland, Ohio, as follows:

(a) the real property constituting WCI's Cleveland (Lakewood), Ohio headquarters and the personal property and other property, tangible and intangible, including without limitation, computer software programs, located at WCI's Cleveland (Lakewood), Ohio headquarters;

(b) financial, banking and other lender, accounting, tax, internal audit, payroll and similar functions;

(c) human resources, collective bargaining, employee health, safety and health, risk management, grievance, equal employment and similar personnel and employee functions;

(d) pension and actuarial functions and health, life and other employee insurance and public and private liability insurance functions;

(e) legal functions, including without limitation, all intellectual property registration, filing, issuance, maintenance and renewal functions;

(f) government relations, public relations, advertising and engineering functions (including environmental, security and similar functions);

provided that the items specified in this Section 1.2.9 shall not include any of the books and records referred to in Section 1.1.8 above.

1.2.10 Those assets and properties of AB Electrolux relating to the Electrolux supervisory headquarters functions located at Luton, England, as follows:

(a) the real property constituting the Electrolux U.K. (Luton) headquarters and the personal property and other property, tangible and intangible, including, without limitation, computer software programs, located at such headquarters; and

(b) financial, banking, leasing, accounting, tax, internal audit, insurance, legal, human resources and similar functions;

provided that the items specified in this Section 1.2.10 shall not include any of the books and records referred to in Section 1.1.8 above.

1.2.11 Any asset or property associated with any pension plan

of WCI identified under this Agreement as not being expressly assumed by BK, BUYER or its designee hereunder.

1.2.12 All other assets and properties of WCI and its affiliates (other than BK and BKL) which are not now, and have not been, used in the BUSINESS.

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1.3 Nonassignable Permits, Licenses and Contracts.

1.3.1 To the extent that any permit, approval, or the like or any contract, license or other agreement, which would constitute a BKL ACQUIRED ASSET but for the fact that it is not assignable or transferable without the consent or waiver of the issuer thereof or the other party thereto or any third party (including a government or governmental unit), or if such assignment or transfer or attempted assignment or transfer would constitute a breach thereof or a violation of any law, decree, order, regulation or other governmental edict, this Agreement shall not constitute an assignment or transfer, or an attempted assignment or transfer, of such permit, approval, contract, license or agreement.

1.3.2 WCI and BKL shall use their reasonable best efforts, and BUYER shall cooperate therewith, to obtain the consents and waivers referred to in Section 1.3.1. A complete list of all permits, approvals and the like and all contracts, licenses and other agreements requiring such consent or waiver (other than those involving aggregate payments of less than US$10,000 that are not otherwise material to the BUSINESS) is set forth in Part 1.3.1 of the SCHEDULE.

1.3.3 To the extent that any consent or waiver referred to in Section 1.3.1 is not obtained by WCI, WCI shall use its reasonable best efforts to (i) provide to BUYER the benefits (less any related costs incurred by WCI, including, without limitation, any applicable taxes) of any permit, approval or the like and of any contract, license or other agreement, all as referred to in Section 1.3.1, to the extent involving the BUSINESS, (ii) cooperate in any reasonable and lawful arrangement designed to provide such benefits to BUYER, without incurring any financial obligation to BUYER other than to provide such benefits, and (iii) at the request of BUYER, enforce at the cost of and for the account of BUYER any right of WCI or its affiliates arising from any permit, approval, or the like and of any contract, license and other agreement described in Section 1.3.1 against such issuer or the other party or parties referred to in Section 1.3.1 (including the right to elect to terminate in accordance with the terms thereof on the advice of BUYER).

1.3.4 To the extent that BUYER is provided the benefits pursuant to this Section 1.3 of any permit, approval or the like or any contract, license or other agreement, BUYER shall perform for the benefit of the issuer thereof or the other party or parties thereto, the obligations of WCI or its affiliates thereunder or in connection therewith, but only to the extent that (i) such performance would not result in any default thereunder or in connection therewith and (ii) such obligations would have been ASSUMED LIABILITIES (as defined in Section 3.1), but for the nonassignability or nontransferability thereof.

ARTICLE II - CONSIDERATION

2.1 Sale Price. The aggregate consideration for the SHARES and the BKL ACQUIRED ASSETS shall be the payment of the FINAL CASH PRICE (as hereinafter defined) and the assumption of the ASSUMED LIABILITIES of BKL. The "FINAL CASH PRICE" shall be determined by adding the NET EQUITY ADJUSTMENT, if the NET EQUITY ADJUSTMENT is a positive number, to ONE HUNDRED THIRTY-FOUR MILLION U.S. Dollars (US$134,000,000), or subtracting the NET EQUITY ADJUSTMENT, if the NET EQUITY ADJUSTMENT is a negative

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number, from ONE HUNDRED THIRTY-FOUR MILLION U.S. Dollars (US$134,000,000). The NET EQUITY ADJUSTMENT as of the CLOSING shall be determined in accordance with Section 2.4. The FINAL CASH PRICE shall be paid at the times and in the manner provided in Sections 2.2 and 2.5.

2.2 Payments of the Preliminary Cash Price. A payment of ONE HUNDRED THIRTY-FOUR MILLION U.S. Dollars (US$134,000,000) (the "PRELIMINARY CASH PRICE") on account of the FINAL CASH PRICE shall be paid at the CLOSING by BUYER to WCI by a certified or official bank check drawn on a bank satisfactory to WCI, or at WCI's election, by the transfer of federal funds.

The PRELIMINARY CASH PRICE shall be allocated to the SHARES and the BKL ACQUIRED ASSETS based on their respective fair market values to be mutually agreed upon by the parties acting reasonably and in good faith. Appropriate adjustments to be mutually agreed upon by the parties acting reasonably and in good faith will be made to the foregoing allocations to take into account the NET EQUITY ADJUSTMENT.

2.3 Audit of Book Value of ACQUIRED ASSETS and ASSUMED LIABILITIES and Determination of NET EQUITY.

2.3.1 Immediately after the CLOSING, WCI shall cause Ernst & Young ("E&Y"), certified public accountants for WCI, to conduct an audit of the BUSINESS in respect of the ACQUIRED ASSETS (including good will) and the ASSUMED LIABILITIES to determine the book value as of the CLOSING of the ACQUIRED ASSETS less the book value of the ASSUMED LIABILITIES (the "NET EQUITY") of the BUSINESS (with a representative of BUYER'S certified public accountant Price Waterhouse ("PW") to be present to observe such audit), on the basis of which E&Y shall prepare and deliver, within sixty (60) days following the CLOSING, to both WCI and BUYER, an audited schedule setting forth the book value of such ACQUIRED ASSETS and ASSUMED LIABILITIES and NET EQUITY as of the CLOSING. Except as otherwise specifically provided for in this Agreement, the book value of the ACQUIRED ASSETS and the ASSUMED LIABILITIES of the BUSINESS shall be determined in accordance with generally accepted accounting principles except to the extent otherwise expressly set forth in the specific Accounting Methods and Procedures described in Part 2.3.1 of the SCHEDULE (the "ACCOUNTING METHODS AND PROCEDURES"). Such audited schedule shall be accompanied by a certificate of E&Y to the effect set forth in the preceding sentence, and to the further effect that such audited schedule has been prepared in accordance with the ACCOUNTING METHODS AND PROCEDURES and that such ACCOUNTING METHODS AND PROCEDURES comply with the

immediately following sentence. The ACCOUNTING METHODS AND PROCEDURES are in accordance with generally accepted accounting principles, with the following possible exceptions:

(a) the allowance for doubtful accounts will be determined based on the formula set forth in the ACCOUNTING METHODS AND PROCEDURES;

(b) FIFO inventory valuations will include certain capitalized product development costs as set forth in the ACCOUNTING METHODS AND PROCEDURES;

(c) inventory reserves, including the LIFO reserve, will be determined based upon procedures set forth in the ACCOUNTING METHODS AND PROCEDURES;

(d) goodwill will be US$104,290,000;

(e) the NET EQUITY will not include any balance sheet accruals related to FAS No. 112 to the extent such accruals have not been recognized previously pursuant to BK's consistently applied year-end accounting methods; and

(f) the NET EQUITY will not include any balance sheet deferred taxes relating to the ACQUIRED ASSETS or the ASSUMED LIABILITIES.

2.3.2 In the event BUYER is in disagreement with the NET EQUITY determined pursuant to Section 2.3.1, each specific item of disagreement shall be set forth in writing and delivered to WCI within forty-five (45) days from the receipt of the audited schedule of the book values of the ACQUIRED ASSETS, the ASSUMED LIABILITIES and the NET EQUITY. If BUYER and WCI shall not, within the next thirty (30) days, resolve each such item of disagreement, both E&Y and BUYER's certified public accountant shall immediately refer the unresolved items of disagreement to a firm of independent public accountants of recognized standing which E&Y and BUYER's certified public accountant mutually select for resolution. Except as otherwise specifically provided for in this Agreement, resolution of the items in dispute shall be made in accordance with generally accepted accounting principles except to the extent otherwise expressly set forth in the specific ACCOUNTING METHODS AND PROCEDURES, and BUYER and WCI shall use their reasonable best efforts to assure that such resolution is made within sixty (60) days subsequent to such referral. Such resolution shall be conclusive and binding on the parties hereto.

2.3.3 The fees and disbursements of BUYER's certified public accountant shall be paid by BUYER, those of E&Y shall be paid by WCI and those of any firm to whom disagreements may be referred (in respect of any given disagreement) shall be paid by the party against whom such disagreement is resolved. BUYER and WCI shall cooperate fully, each at its own expense, in the conduct of the audit by E&Y and review by BUYER's certified public accountant and the firm of independent public accountants selected to resolve disputes, if any, and shall make available to such accountants all working papers, data and such other information as may be necessary or desirable in that connection.

2.4 NET EQUITY ADJUSTMENT. The NET EQUITY ADJUSTMENT shall be the NET EQUITY as of CLOSING determined in accordance with Section 2.3 minus ONE HUNDRED FORTY-TWO MILLION TWO HUNDRED THOUSAND U.S. Dollars (US$142,200,000) (the "OPENING NET EQUITY"), which OPENING NET EQUITY does not include any liabilities that constitute EXCLUDED LIABILITIES (as defined in Section 3.2), it being understood that if the OPENING NET EQUITY does include a liability that constitutes an EXCLUDED LIABILITY, then the OPENING NET EQUITY shall be adjusted upward to delete therefrom the EXCLUDED LIABILITIES.

2.5 Settlement and Payment of the FINAL CASH PRICE. Within ten (10) days after the final determination of the NET EQUITY as of the CLOSING (or such other date as shall be mutually agreed to in writing by the parties) (the "SETTLEMENT DATE"), the NET EQUITY ADJUSTMENT as defined in Section 2.4 shall be made to the PRELIMINARY CASH PRICE in satisfaction or reconciliation of the FINAL CASH PRICE. In the event that the NET EQUITY ADJUSTMENT is a positive number, BUYER shall pay to WCI an amount equal to the NET EQUITY ADJUSTMENT on the SETTLEMENT DATE by means of a bank or

cashier's check or wire transfer of federal funds. To the extent that the NET EQUITY ADJUSTMENT is a negative number, WCI shall pay to BUYER an amount equal to the NET EQUITY ADJUSTMENT on the SETTLEMENT DATE by means of a bank or cashier's check or wire transfer of federal funds.

2.6 Effect of Certain Taxes. Notwithstanding any other provision of this Agreement, the ASSUMED LIABILITIES for purposes of this Article II (including but not limited to the determination of the NET EQUITY, the NET EQUITY ADJUSTMENT, and the FINAL CASH PRICE) shall not include any liability for taxes, interest or penalties resulting from any election filed by BK or BUYER under Section 338 of the Internal Revenue Code of 1986, as amended (the "Code"), which liability, if any, shall nevertheless be the sole obligation of BK.

ARTICLE III - ASSUMED LIABILITIES; INDEMNIFICATION

3.1 Assumed Liabilities.

Subject to Section 3.2 below, upon the CLOSING, and effective as of the CLOSING, (a) BK shall be responsible for the ASSUMED LIABILITIES of BK and (b) BUYER shall cause the entity designated by it pursuant to Section 9.4 below to assume the ASSUMED LIABILITIES of BKL (the "BKL ASSUMED LIABILITIES"). The "ASSUMED LIABILITIES" shall mean:

3.1.1 All liabilities and obligations, contingent, absolute, known or unknown, of BK and BKL arising out of the conduct of the BUSINESS, whether in existence as of the CLOSING or (in the case of BK) arising thereafter, including but not limited to (i) all liabilities arising out of the conduct of the BUSINESS of the type set forth on the CURRENT BALANCE SHEET brought forward to the CLOSING; (ii) subject to Section 1.3, the liabilities and obligations which accrue subsequent to the CLOSING and/or remain to be performed under the CONTRACTS, the WARRANTY OBLIGATIONS (as defined in Section 5.2.2), the LEASEHOLDS, the LICENSES, and the COLLECTIVE BARGAINING AGREEMENTS; (iii) all liabilities

and obligations arising out of the conduct of the BUSINESS to be assumed by BUYER elsewhere in this Agreement, including without limitation, those described in Article VI, (iv) all other liabilities and obligations arising out of the conduct of the BUSINESS arising after the CLOSING whether they arise out of the conduct of the BUSINESS prior to or after the CLOSING and (v) the amount of payroll, real estate and other non-income TAXES assessed against BK and BKL, in the case of each such TAX, to the extent set forth on Part 3.2(f) of the SCHEDULE, provided, however, that the amount of each such TAX that exceeds the amount set forth on Part 3.2(f) of the SCHEDULE with respect to such TAX shall constitute EXCLUDED LIABILITIES (as defined below) and shall not constitute ASSUMED LIABILITIES.

3.1.2 Liabilities for post-retirement benefits under the BK COLLECTIVE BARGAINING AGREEMENT.

3.2 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, there shall not be included in the ASSUMED LIABILITIES any of the following liabilities, whether contingent, absolute, known or unknown (each an "EXCLUDED LIABILITY" and collectively, the "EXCLUDED LIABILITIES"), and the EXCLUDED LIABILITIES applicable to BK (the "BK EXCLUDED LIABILITIES") shall be assumed by WCI at or prior to the CLOSING:

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(a) Liabilities and obligations (i) arising out of Workers' Compensation claims relating to employment by BK or BKL as of or prior to the CLOSING, including but not limited to those claims listed on Part 3.2(a) of the SCHEDULE or (ii) in respect of any employees of WCI or its affiliates who are not EMPLOYEES (as defined in Section 6.1.1) or (iii) from or in respect of any EMPLOYEES employed by BUYER, BK or their affiliates as of CLOSING caused by any act or failure to act by WCI or its affiliates prior to CLOSING.

(b) Liabilities, obligations and claims (contingent or absolute) relating to or arising out of Product Liability Matters (as defined below), whether in existence as of the CLOSING or arising thereafter, resulting in death, injury, disease, property damage (including, but not limited to, the loss of use thereof and consequential damages therefrom) or economic loss or damage (whether compensatory or punitive) in respect of any PRODUCTS or any other product, accessory, attachment, component, part or service manufactured or assembled (in whole or in part), sold, rented, performed or delivered by WCI, BK, BK-LTD or WCI-LTD or any affiliate thereof (or any predecessor company) prior to the CLOSING, including, but not limited to, those claims listed on Part 3.2(b) of the SCHEDULE; except that this Section 3.2(b) shall not include (i) any such liabilities, obligations or damages that are judicially determined (after expiration of any appeals) to have resulted solely from defects caused by major rebuilding of a PRODUCT performed directly by BK or BUYER or any affiliate of BK or BUYER after the CLOSING, or (ii) the obligations of BK under Section 5.2.2 below to repair or replace any defective parts in accordance with the terms, conditions and limitations of any standard express written warranty or the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE. "Product Liability Matters" mean any

negligence or other tort or strict or other product liability matters, other tortious acts or failures to act, breach of warranty, whether express (other than BK's obligations under the express written warranties described in Section 5.2.2 and the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE) or implied, or any other injury, disease or damage (whether compensatory or punitive) caused by or attributable to the PRODUCTS or any other product, accessory, attachment, component, part or service (whether actual or alleged and whether relating to legal theories, common law, statues, regulations, jurisprudence, or other principles, now existing or hereafter created, applied, adopted or otherwise recognized).

(c) All liabilities for benefits and benefit claims with respect to employees and their spouses, dependents, survivors and beneficiaries arising under the employee welfare benefit plans (as defined in Section 3 (1) of ERISA) of WCI, regardless of when such liabilities or claims are asserted, if they are incurred prior to the CLOSING.

(d) Any pension liabilities with respect to employees of BK, WCI or its affiliates, other than employees included in the BLAW-KNOX PLAN or BKL's UNITED KINGDOM PLAN.

(e) Liabilities for post-retirement benefits other than those under the BK COLLECTIVE BARGAINING AGREEMENT referred to in Section 3.1.2.

(f) TAXES assessed against or payable by WCI, BK or BKL or otherwise assessed against or payable by the BUSINESS with respect to taxable periods or portions thereof ending on or prior to the CLOSING, including all liabilities for TAXES resulting from the transactions contemplated by this Agreement, except to the extent set forth in Section 9.6, provided that any liability for TAXES resulting from any election filed by BK or BUYER under Code Section 338 shall not be an EXCLUDED LIABILITY, shall be the sole obligation of BK, and shall not be regarded as having been assumed by WCI at any time. "TAXES" shall mean any tax, fee, assessment or charge of any kind whatsoever imposed by any governmental authority, together with any interest or penalty imposed with respect thereto, and any liability for such amounts as a result either of being a member of an affiliated, combined, consolidated or unitary group (as such terms are defined for Federal, state, local or foreign tax purposes, as the case may be) or of a contractual obligation to indemnify any other entity, provided, however, that TAXES shall not include the amount of payroll, real estate and other non-income TAXES assessed against BK and BKL, in the case of each such TAX, to the extent set forth on Part 3.2(f) of the SCHEDULE.

(g) Any liability corresponding to an EXCLUDED ASSET.

(h) Liabilities, obligations, claims, damages, clean up or other remedial actions relating to (i) environmental matters relating to or arising out of any state of facts or condition existing, or acts or omissions occurring, prior to the CLOSING at or in connection

with properties included in the ACQUIRED ASSETS, any LEASEHOLDS or any other properties previously owned, leased or operated by WCI or any of its affiliates or any predecessor company and (ii) the generation, transportation, storage, handling or disposal of hazardous materials (whether on-site or off-site) relating to or arising out of any state of facts or condition existing, or acts or omissions of WCI or any of its affiliates (or any predecessor company) occurring, prior to the CLOSING.

(i) Indebtedness of BK or BKL for borrowed money, including, without limitation, all intercompany indebtedness.

(j) Liabilities in connection with revenue bonds issued to finance BK's present U.S. facilities (the "Revenue Bonds").

(k) Liabilities and obligations arising under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), relating to any current or former employee pension benefit plan, as defined in Section 3(2) of ERISA, of WCI or any subsidiary or affiliate, or any current or former trade or business (whether or not incorporated) of WCI which is, or was at any time, by reason of common control or otherwise, required to be aggregated with WCI or any subsidiary or affiliate of WCI, pursuant to Section 4001(b) of ERISA and/or Section 414(b), (c), (m) or (o) of the Code and the regulations promulgated thereunder, including, without limitation, all liabilities and obligations arising out of or in connection with the litigation described in Part 3.2(k) of the SCHEDULE or any of the facts or circumstances alleged in such litigation.

(l) Liabilities and obligations in connection with any guarantees, recourse agreements or repurchase agreements between BK or BKL, on the one hand, and WCI, AB Electrolux or any of their affiliates, on the other hand.

(m) Liabilities and obligations with respect to WCI's tax-qualified 401(k) plan.

(n) Liabilities and obligations arising out of or relating to the alleged patent infringement claim (the "PATENT CLAIM") set forth in that certain letter dated March 9, 1993 from Richard W. Bethea, Jr., of Stophel & Stophel, to David A. Tamburro, of Nies, Kurz, Bergert & Tamburro (the "Bethea Letter").

(o) All other liabilities and obligations not arising out of the conduct of the BUSINESS.

(p) Any extended or expanded warranty obligations other than the standard express warranty attached as Part 5.2.2 of the SCHEDULE and the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE.

(q) Liabilities and obligations pertaining to personal or real property leases previously relating to the BUSINESS, which are no longer a part of the BUSINESS, whether due to assignment by BK, BKL, or any of their affiliates, or otherwise.

Without duplication of any amount provided for under Section 3.3.5, if BK obtains a tax deduction for federal or state income taxes for liabilities paid by WCI specified in Section 3.2, BUYER will reimburse WCI for the amount of such tax benefit actually realized by BK in the year in which the liability to which such tax benefit relates is paid by WCI. Any such tax benefit, to the extent permitted by applicable law, shall be treated as an adjustment of the purchase price.

3.3 Indemnification.

3.3.1 Except as otherwise agreed in Section 3.3.3 below, WCI shall indemnify and save BUYER, BK, and their affiliates harmless from and against any and all expenses (including attorney's fees), damages (whether compensatory or punitive), claims, liabilities or obligations whatsoever resulting from (i) any EXCLUDED LIABILITY, (ii) any breach of any covenant of WCI included herein, or (iii) any misrepresentations or breach of warranty of WCI as of the date of this Agreement or as of the CLOSING with respect to those representations and warranties of WCI contained in this Agreement or in the SCHEDULE, subject to Section 9.12.1, provided BUYER shall give prompt, but no more than thirty (30) days after institution, notice to WCI of the institution of any action, suit, proceeding or demand at any time instituted against or made upon BUYER in connection with which BUYER could claim indemnification hereunder; provided further that the failure of BUYER to provide such notice shall not affect the obligations of WCI hereunder, unless such failure actually materially prejudices WCI's right to contest such action, suit, proceeding or demand. BUYER shall, at the same time of giving such notice, give WCI full authority to defend, adjust, compromise or settle the action, suit, proceeding or demand of which such notice shall have been given, in the name of BUYER or otherwise, as WCI shall elect, provided that neither WCI nor any of its affiliates shall, without the prior written consent of the BUYER, settle or otherwise compromise any such action, suit, proceeding or demand in any manner that, in the reasonable judgment of the BUYER, would adversely affect BUYER; provided further, however, that WCI shall not be liable to BUYER under clause (iii) of this Section 3.3.1 until the aforementioned expenses, damages, claims, liabilities and obligations under such clause (iii) shall

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have exceeded in the aggregate Five Hundred Thousand U.S. Dollars (US$500,000), and no claim for an alleged misrepresentation or breach of warranty under such clause (iii) shall be made after the third anniversary of the CLOSING DATE (as defined in Section 8.1). WCI shall keep BUYER fully and timely informed with respect to the commencement, status and nature of any such action, suit, proceeding or demand. WCI shall, in good faith, allow BUYER to make comments to WCI regarding the conduct of or positions taken in any such action, suit, proceeding or demand. Without limiting the generality of the foregoing, the indemnification provision of this Section 3.3.1 shall include, with respect to the EXCLUDED LIABILITIES described in Section 3.2(b), any and all expenses (including attorneys fees), damages, claims, liabilities and obligations whatsoever for or resulting from any injury or disease to persons (including death) or damage to property (including the loss of use thereof and consequential damages therefrom) or for economic loss, irrespective of whether such expenses, damages, claims, liabilities and obligations are caused, or alleged to be caused, by a breach of warranty, whether express (other than

BK's obligation under the express written warranties described in Section 5.2.2 and the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE) or implied, or the negligence or other tort or strict or other product liability or other tortious acts or failures to act by BK, BKL, BUYER or any of their affiliates or otherwise caused by or attributable to the PRODUCTS or any other products, accessory, attachment, component, part or service.

3.3.2 Except as otherwise agreed in Section 3.3.3 below, BUYER shall indemnify and save WCI and its affiliates harmless from and against any and all expenses (including attorney's fees), damages (whether compensatory or punitive), claims, liabilities or obligations whatsoever (i) resulting from any misrepresentations or breach of warranty of BUYER set forth herein, subject to Section 9.12.1, (ii) resulting from the ASSUMED LIABILITIES, or (iii) arising out of breach of any covenant of BUYER herein; provided, WCI shall give prompt, but no more than thirty (30) days after institution, notice to BUYER of the institution of any action, suit, proceeding or demand at any time instituted against or made upon WCI in connection with which WCI could claim indemnification hereunder, provided further that the failure of WCI to provide such notice shall not affect the obligations of BUYER hereunder, unless such failure actually materially prejudices BUYER's right to contest such action, suit, proceeding or demand. WCI shall, at the same time of giving such notice, give BUYER full authority to defend, adjust, compromise or settle the action, suit, proceeding or demand of which such notice shall have been given, in the name of WCI or otherwise, as BUYER shall elect, provided that neither BUYER nor any of its affiliates shall, without the prior written consent of WCI, settle or otherwise compromise any such action, suit, proceeding or demand in any manner that, in the reasonable judgment of WCI, would adversely affect WCI, provided further, however, that BUYER shall not be liable to WCI under clause (i) of this Section 3.3.2 until the aforementioned expenses, damages, claims, liabilities and obligations under such clause (i) shall have exceeded in the aggregate Five Hundred Thousand U.S. Dollars (US$500,000), and no claim for alleged misrepresentation or breach of warranty under such clause (i) shall be made after the third anniversary of the CLOSING DATE. BUYER shall keep WCI fully and timely informed with respect to the commencement, status and nature of any such action, suit, proceeding or demand. BUYER shall, in good faith, allow WCI to make comments to BUYER regarding the conduct of or positions taken in any such action, suit, proceeding or demand. Without limiting the generality of the forgoing, the indemnification provision of this Section

3.3.2 shall include, with respect to Product Liability Matters to the extent (and only to the extent) included within the ASSUMED LIABILITIES pursuant to Section 3.1.1 above, any and all expenses (including attorneys' fees), damages, claims, liabilities and obligations whatsoever for or resulting from any injury or disease to persons (including death) or damage to property (including the loss of use thereof and consequential damages therefrom) or for economic loss, irrespective of whether such expenses, damages, claims, liabilities and obligations are caused, or alleged to be caused, by a breach of warranty, whether express or implied, or the negligence or other tort or strict or other product liability or other tortious acts or failures to act by WCI or any of its affiliates or otherwise caused by or attributable to PRODUCTS or any other products,

accessory, attachment, component, part or service.

3.3.3 Each of WCI and BUYER shall share equally any liabilities or obligations arising out of or related to (a) the failure to inform or consult with employees, trade unions or similar organizations with respect to the transactions contemplated by this Agreement pursuant to the U.K. Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE") and (b) any "unfair dismissals" of employees as contemplated under TUPE, in each case regardless of whether any claim relating to (a) or (b) above ("Shared Claims") are asserted against WCI or BUYER or any of their respective affiliates. WCI and BUYER shall cooperate with each other in jointly defending any Shared Claims. If counsel is mutually selected to represent both WCI and BUYER, then WCI and BUYER shall share equally the fees and disbursements of such counsel; if counsel is selected by WCI or BUYER to represent only WCI or BUYER, respectively, then the fees and disbursements of such counsel shall be paid by the party retaining such counsel.

3.3.4 In addition to WCI's other obligations set forth in this Section 3.3, WCI shall indemnify and save BUYER, BK and their affiliates harmless from and against any and all expenses (including attorney's fees), damages (whether compensatory or otherwise), claims, liabilities or obligations relating to or arising out of the Purchasers' (as defined in the Blaw-Knox Trademark Agreement referred to below) use of the Term (as defined in the Blaw-Knox Trademark Agreement) in the manner specified in Section 5(ii) of the Blaw-Knox Trademark Agreement, dated as of April 20, 1994, by and among WCI, BK, Blaw-Knox Corporation, Scottdale Manufacturing Corporation, Wheeling Machine & Foundry Company, Buffalo Technologies Corporation, R.O.B. Realty Corporation, and Park Corporation. BUYER will give WCI reasonably prompt notice of any claim asserted against such Purchasers alleging facts or circumstances that would give rise to an indemnity by WCI under this Section 3.3.4.

3.3.5 Any claims hereunder for indemnification by either party shall be reduced to the extent of any tax benefits resulting from such indemnified matter which are actually realized by the claiming party in the year in which the indemnity payment is made.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of WCI. "To the best of WCI's knowledge" shall mean the knowledge of WCI management and legal counsel located at the Cleveland corporate headquarters and shall also include the knowledge of the following persons: Bruno Getz, Mike Miller, Garry Bowhall, Edgar Halton, Ron Chaston, Anthony Wardle and Gary Albin. WCI hereby represents and warrants to BUYER as follows:

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4.1.1 Corporate Data and Authority of WCI.

(a) WCI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) BK is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is also duly

qualified and in good standing to do business as a foreign corporation in the State of Illinois. The authorized capital stock of BK consists of 100 shares of Common Stock, par value $1.00 per share, all of which shares are outstanding. All of the Shares have been validly issued and are fully paid and nonassessable and are owned by WCI free and clear of all liens, claims and encumbrances. BK has no securities reserved for issuance. Except for the SHARES there are no shares of capital stock of BK authorized, issued or outstanding and there are no outstanding subscriptions, options, warrants, rights, convertible securities or other agreements or commitments of any character providing for the purchase, issuance or sale of any shares of capital stock of BK. The delivery to BUYER of the SHARES pursuant to the provisions of this Agreement will transfer to BUYER good and marketable title thereto, free and clear of all liens, encumbrances, restrictions and claims of every kind. None of BK, WCI-LTD or BK-LTD owns, either directly or indirectly, any equity security or other capital stock of or ownership or proprietary interest in any corporation, partnership, association, trust, joint venture or any other entity, except that WCI-LTD owns all of the outstanding shares of capital stock of BK-LTD.

(c) WCI-LTD is a corporation duly organized, validly existing and in good standing to do business under the laws of the State of Delaware. BK-LTD is a limited liability company duly incorporated and subsisting under the laws of England and is not in liquidation. BK-LTD is a wholly-owned subsidiary of WCI-LTD.

(d) WCI and its affiliates have full power and authority to sell and transfer or to cause to be sold and transferred to BUYER the SHARES and the BKL ACQUIRED ASSETS and to perform all other undertakings hereunder, and the execution, delivery and performance of this Agreement and all related documents delivered by WCI and its affiliates at the CLOSING are and will be within the authority of the officers of WCI or its affiliates who execute them. This Agreement constitutes and, upon execution and delivery thereof, the other agreements and instruments to be delivered by WCI and its affiliates pursuant to this Agreement will constitute, valid and binding agreements of WCI or such affiliate, respectively, subject to bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights or the availability of the remedy of specific performance.

(e) The consummation of the transactions by WCI and its affiliates contemplated hereby will not conflict with the Articles of Incorporation or By-laws of WCI, BK or WCI-LTD nor the constitutive documents of BK-LTD and will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which WCI, BK, WCI-LTD or BK-LTD is a party or by which WCI, BK, WCI-LTD or BK-LTD or any of their properties are bound.

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4.1.2 Financial Data.

(a) The consolidated and individual unaudited balance sheets and related consolidated and individual statements of income and cash flow of BK and BKL as of and for the years ended December 31, 1993, December 31, 1992 and December 31, 1991, together with the notes thereto (collectively, the "FINANCIAL STATEMENTS"), copies of which are included in Part 4.1.2 of the SCHEDULE, fairly present the financial position of the BUSINESS on a divisional basis as of such respective dates and the results of operations and cash flow of the BUSINESS on a divisional basis for the respective years then ended, in conformity with WCI's accounting principles for its operating subsidiaries and divisions applied on a consistent basis. Such accounting principles are in accordance with generally accepted accounting principles, except as expressly set forth in the notes to the FINANCIAL STATEMENTS and in the ACCOUNTING METHODS AND PROCEDURES.

(b) The unaudited consolidated balance sheet of BK and BKL as of December 31, 1993, and the related consolidated unaudited statements of income and cash flow for the period ending on such date, together with the notes thereto, are sometimes herein collectively referred to as the "CURRENT BALANCE SHEET".

4.1.3 Properties and Operations of the BUSINESS.

(a) Except as disclosed in Part 4.1.3(a) of the SCHEDULE or in the letter dated April 20, 1994 from Daniel R. Elliott of WCI to Bernard D. Henely of BUYER (the "WCI LETTER"), since December 31, 1993 there has not been any change which has had a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the BUSINESS ("MATERIAL ADVERSE EFFECT").

(b) BK has good and marketable title to all of the ACQUIRED ASSETS of BK, and WCI-LTD has good and marketable title to all of the BKL ACQUIRED ASSETS (which, together with the ACQUIRED ASSETS of BK, constitute all of the ACQUIRED ASSETS), in each case free and clear of all liens and encumbrances, except for: (i) liens disclosed in Part 4.1.3(b) of the SCHEDULE; (ii) liens for taxes not yet due and payable or being contested in good faith by appropriate proceedings, and for which adequate reserves have been established; and (iii) imperfections of title, easements, pledges, charges and encumbrances, if any, incurred in the ordinary course of business that do not materially detract from the value or marketability or interfere with the present use of the ACQUIRED ASSETS or otherwise materially impair the operation of the BUSINESS and which do not secure obligations for borrowed money or the deferred portion of the purchase price of acquired assets ("PERMITTED LIENS").

(c) BK-LTD owns no assets or property.

4.1.4 Litigation and Other Matters.

(a) No action, suit, or proceeding is pending or, to the best of WCI's knowledge after due inquiry, threatened against WCI, BK, WCI-LTD or BK-LTD which could materially and adversely affect the transactions contemplated by this Agreement. None of BK, WCI-LTD or BK-LTD is in default with respect to any order, injunction or decree directed to BK, WCI-LTD or BK-LTD by any court or governmental department or agency which directly affects the operations of the BUSINESS or the use of the ACQUIRED

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ASSETS. Except as described in Part 4.1.4(a) of the SCHEDULE, since January 1, 1994 (i) no actions, suits, proceedings, grievances or unfair labor practices have been filed against BK, WCI-LTD or BK-LTD or any of the properties or assets or intangible assets of BK, WCI-LTD or BK-LTD which relate directly to the BUSINESS or the ACQUIRED ASSETS or the transactions contemplated by this Agreement and (ii) none of BK, WCI-LTD or BK-LTD has been subject to any order of any court or any governmental agency which relates to or could adversely affect the BUSINESS and (iii) no actions, suits, proceedings, grievances or unfair labor practices have been filed against WCI or any of its affiliates which, if adversely determined, could impose a liability on BK or the BUSINESS or could subject the assets or properties of BK or the BUSINESS to any lien, encumbrance or enforcement action. Part 4.1.4(a) of the SCHEDULE also describes all such actions, suits, proceedings, grievances and unfair labor practices and the related expenses, including indemnification and legal fees, and reserves, incurred since January 1, 1989 and any unresolved claims filed prior thereto, none of which individually or in the aggregate could reasonably be expected to have a MATERIAL ADVERSE EFFECT.

(b) Labor Matters. Each of BK and BK-LTD is currently a party to its respective COLLECTIVE BARGAINING AGREEMENT. Except as disclosed on Part 4.1.4(b) of the SCHEDULE or in the WCI LETTER (as defined in Section 4.1.3(a)), since January 1, 1994 there has not been, nor was there or is there, to best of WCI's knowledge after due inquiry, threatened or contemplated, any strike, slowdown, picketing or work stoppage by any employees against the BUSINESS, its assets or properties wherever located, any secondary boycott with respect to the PRODUCTS, any lockout by WCI, BK, WCI-LTD or BK-LTD of any of their employees or any labor trouble or other occurrence, event or condition of a similar character affecting, or which may affect, the business, operation, assets or properties of the BUSINESS.

(c) Labor Disputes. Since January 1, 1994, no significant unsettled labor dispute has affected the BUSINESS which would have a MATERIAL ADVERSE EFFECT.

4.1.5 Warranties. Part 4.1.5 of the SCHEDULE sets forth (i) copies of all current, express written PRODUCT warranties and written warranty policies of BK, WCI-LTD and BK-LTD in respect of the BUSINESS, including, without limitation, all specific guarantees with respect to performance of any PRODUCT, (ii) to the best of WCI's knowledge after due inquiry, each of such PRODUCT warranty or policy which is subject to any dispute between BK, WCI-LTD and BK-LTD and any third person and (iii) the PRODUCT warranty and policy experience of the BUSINESS for 1993.

4.1.6 Certain Governmental Matters.

(a) Taxes. All of BK's, WCI-LTD's and BK-LTD's Tax returns and reports ("RETURNS") required by law to be filed have been duly filed. Such RETURNS as filed are accurate in all material respects. All TAXES and other governmental charges with respect to the BUSINESS which are due and payable have been paid except for such, if any, as are being contested in

good faith by appropriate proceedings which are identified and described in Part 4.1.6(a) of the SCHEDULE and adequately disclosed and fully provided for on the CURRENT BALANCE SHEET and in the books and records of BK and BKL. No assessments for additional TAXES have been made or proposed which have not been provided for in the CURRENT BALANCE SHEET. With respect to each of BK, WCI-LTD and BK-LTD (or any predecessor company), to the best of WCI's knowledge after due inquiry, no claim has ever been made by any

taxing authority in a jurisdiction where such company does not file RETURNS that such company is or may be subject to taxation relating to the BUSINESS by that jurisdiction.

(b) Compliance. Except as identified and described in Part 4.1.6(b) of the SCHEDULE, since July 1, 1993 the operations of the BUSINESS have been conducted in all material respects in accordance with and meet the applicable laws and regulations of all United States and United Kingdom governmental authorities and, to the best of WCI's knowledge after due inquiry, all other governmental authorities, and all subdivisions thereof having jurisdiction over it or the PRODUCTS and of all states, municipalities and other political subdivisions and agencies thereof, including laws, rules, regulations, orders and ordinances relating to (i) the environment and the generation of hazardous waste, (ii) employee safety and (iii) discrimination against employees.

Either BK, WCI-LTD or BK-LTD has in full force and effect all material governmental licenses and permits required for the operation of the BUSINESS and no violations exist or have been recorded in respect of any such existing licenses or permits and remain uncorrected as of the CLOSING and no proceeding is pending or to the best knowledge of WCI threatened which seeks the revocation or limitation of any such existing licenses or permits.

4.1.7 Properties.

(a) Sufficiency. Except as disclosed in Part 4.1.7(a) of the SCHEDULE, since July 1, 1993 none of BK, WCI-LTD or BK-LTD has disposed of any real or personal property, tangible or intangible, associated with the BUSINESS other than in the ordinary course. The ACQUIRED ASSETS constitute all the assets and tangible and intangible properties necessary to conduct the BUSINESS as presently conducted.

(b) Personal Properties. Except as identified and described in Part 4.1.7(b) of the SCHEDULE, either BK or WCI-LTD has good and marketable title to the personal properties used in the BUSINESS and all of such properties which are capitalized are reflected in Part 4.1.7(b) of the SCHEDULE, as at the date of the CURRENT BALANCE SHEET.

4.1.8 Agreements and Commitments.

(a) Material Contracts. Part 4.1.8(a) of the SCHEDULE lists all material CONTRACTS to which BK, WCI-LTD or BK-LTD is a party, including, without limitation:

(i) any agreement or commitment relating to the employment of any person by BK, WCI-LTD or BK-LTD (other than those that are

terminable at will without penalty),

(ii) any agreement, indenture or other instrument which contains restrictions with respect to payments of dividends or other distributions in respect of its capital stock,

(iii) any agreement or commitment relating to capital expenditures in excess of Ten Thousand U.S. Dollars (US$10,000),

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(iv) any loan or advance to, or investment in, any person or entity or any agreement or commitment relating to the making of any such loan, advance or investment (other than loans or commitments made in the ordinary course of business pursuant to dealer inventory financing programs), in excess of Ten Thousand U.S. Dollars (US$10,000),

(v) any agreement or commitment for borrowed money by BK, WCI-LTD or BK-LTD,

(vi) any guarantee or other contingent liability in respect of any indebtedness or obligation of any person or entity (other than the endorsement of negotiable instruments for collection in the ordinary course of business) involving aggregate payments in excess of Ten Thousand U.S. Dollars (US$10,000),

(vii) any management service, consulting or other similar type of agreement (other than those that are terminable upon 30 days notice without penalty) involving payments in excess of Ten Thousand U.S. Dollars (US$10,000),

(viii) any agreement or commitment limiting the ability of BK, WCI-LTD or BK-LTD to engage in any line of business or to compete with any person or entity that will be binding on BK, WCI-LTD or BK-LTD after the CLOSING,

(ix) any real or personal property lease involving annual rentals of Ten Thousand Dollars (US$10,000) or more, and any licenses involving intellectual property (other than computer software licenses generally available to the public), and

(x) any agreement or commitment not entered into in the ordinary course of business involving aggregate payments of Ten Thousand Dollars U.S. (US$10,000) or more (other than those that are terminable upon 30 days notice without penalty).

No default or event of default currently exists under any of the foregoing CONTRACTS.

(b) Compensation. Except as disclosed in Part 4.1.8(b) of the SCHEDULE and the WCI LETTER (as defined in Section 4.1.3(a)), since July 1, 1993 none of BK, WCI-LTD or BK-LTD has paid or become committed to

pay to or for the benefit of any employees or sales representatives compensation other than wages, salaries or sales commissions at rates then in effect, nor have they made or been committed to make any payments pursuant to any unusual compensatory arrangement.

(c) Employees. Part 4.1.8(c) of the SCHEDULE contains all: (i) life insurance plans, group health and group welfare plans, retiree life and retiree medical plans and other fringe benefit plans or commitments (whether or not reduced to writing) which apply to personnel of the BUSINESS (and which are not classified herein as PENSION PLANS or OTHER EMPLOYEE PLANS) (collectively the "BENEFIT PLANS"), (ii) pension, retirement, profit sharing, 401K and savings plans which apply in any way to the personnel of the BUSINESS (collectively the "PENSION PLANS") and (iii) employment, consulting, union, incentive compensation, deferred compensation, stock option, employee stock purchase, and bonus plans and agreements and other employee perquisites and policies which apply to the personnel of the BUSINESS (collectively the "OTHER EMPLOYEE PLANS").

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(d) Employee Benefit Plans. Each BENEFIT PLAN and PENSION PLAN that constitutes an employee benefit plan within the meaning of Section 3(3) of ERISA, maintained by BK or to which BK contributes or is a party (each, a "PLAN" and collectively, the "PLANS") is in substantial compliance with applicable law and has been administered and operated in all material respects in accordance with its terms. Each PLAN which is intended to be "qualified" within the meaning of Section 401(a) of the Internal Revenue Code of 1986, as amended (the "CODE"), has received a favorable determination letter from the Internal Revenue Service and no event has occurred and no condition exists which could reasonably be expected to result in the revocation of any such determination. No event which constitutes a "Reportable Event" (as defined in Section 4043(b) of ERISA) for which the 30-day notice requirement has not been waived by the Pension Benefit Guaranty Corporation ("PBGC") has occurred with respect to any PLAN. No PLAN subject to Title IV of ERISA has been terminated or is or has been the subject of termination proceedings pursuant to Title IV of ERISA. Full payment has been made of all amounts which WCI or any of its subsidiaries were required under the terms of any PLAN to have paid as contributions to such PLAN on or prior to the date hereof (excluding any amounts not yet due) and no PLAN which is subject to Part 3 of Subtitle B of Title I of ERISA has incurred any "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the CODE), whether or not waived. Neither WCI nor any of its subsidiaries nor any other "disqualified person" or "party in interest" (as defined in Section 4975(e)(2) of the CODE and Section 3(14) of ERISA, respectively) has engaged in any transaction in connection with any PLAN that could reasonably be expected to result in the imposition of a material penalty pursuant to Section 502(i) of ERISA, damages pursuant to Section 409 of ERISA or a tax pursuant to Section 4975(a) of the CODE. No material liability, claim, action or litigation has been made, commenced or threatened with respect to any PLAN (other than for benefits payable in the ordinary course and for the payment of PBGC insurance premiums). No PLAN is a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA). BK does not have any material unfunded liabilities for benefits accrued pursuant to any PLAN, which PLAN is not intended to be qualified under Section 401(a) of the CODE. Neither BK nor any trade or business

(whether or not incorporated) which is required to be aggregated therewith pursuant to Section 4001(b) of ERISA and/or Section 414(b), (c), (m) or (o) of the CODE and the regulations promulgated thereunder has or could incur or be subject to (i) any material liability under Title IV of ERISA (other than for the payment of PBGC insurance premiums in the ordinary course), (ii) a security interest pursuant to Section 412(f) of the CODE or (iii) a lien pursuant to Section 412(n) of the CODE or Section 4068 or 302(f) of ERISA.

(e) U.K. Plan. The only active members of BKL's UNITED KINGDOM PLAN (the "UK PLAN") are employees exclusively engaged in the BUSINESS and BKL is the only participating employer. There is no obligation or ex gratia or voluntary arrangement to provide any relevant benefits (as defined in Section 612 Income and Corporation Taxes Act 1988 ("ICTA")) in respect of any employee exclusively engaged in the United Kingdom in the BUSINESS except under the UK PLAN, and no assurances or undertakings have been given as to the continuance or introduction or improvement of the provision of any such benefits. The UK PLAN has exempt approved status under Chapter I of Part XIV of the ICTA and a contracting out certificate is in force in respect of the UK PLAN relating to the employees of the BUSINESS in the United Kingdom, and none of WCI, WCI-LTD or BK-LTD knows of any circumstance which might cause such approval or such certificate to be withdrawn or to cease to apply. The UK PLAN has at all times been operated

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in all material respects in accordance with its governing scheme documents and the governing scheme documentation is in substantial compliance with and has been administered in all material respects in accordance with all applicable laws. All taxes and expenses relating to the UK PLAN have been duly paid, and all contributions due to be made to the UK PLAN have been duly paid. None of the UK PLAN's investments are employer-related investments (as defined in Section 57A of the Social Security Pensions Act 1975). No material liability, claim, action or litigation has been made, commenced or threatened with respect to the UK PLAN (other than for benefits payable in the ordinary course). Death benefits payable under the UK PLAN are insured with an insurance company authorized under the U.K. Insurance Companies Act and all such contracts of insurance are enforceable and all premiums thereunder have been paid. No augmentations of benefits have been made under the UK PLAN. There have been disclosed to BUYER material particulars of the UK PLAN, including copies of all deeds and documents constituting the UK PLAN which are of current effect.

4.1.9 Trademarks, Service Marks, Trade Names & Copyrights. Part 1.1.5(a) of the SCHEDULE lists all TRADEMARKS, SERVICE MARKS, TRADE NAMES and COPYRIGHTS and applications therefor either owned by BK, WCI-LTD or BK-LTD or otherwise used in the conduct of the BUSINESS, and all renewals, modifications and extensions thereof.

4.1.10 Patents. Part 1.1.6(a) of the SCHEDULE lists all PATENTS and applications for grant of PATENTS either owned by BK, WCI-LTD or BK-LTD or otherwise used in the conduct of the BUSINESS or pertaining to the production, processing or design of PRODUCTS by BK or BKL.

4.1.11 Licenses. The LICENSES constitute all of the licenses relating to or associated with the BUSINESS. Part 4.1.11 of the SCHEDULE includes copies of all material LICENSES pertaining to the BUSINESS, to

which BK or BKL is a party or which may affect the rights of BK, WCI-LTD or BK-LTD. Except as disclosed in Part 4.1.11 of the SCHEDULE, none of BK, WCI-LTD or BK-LTD is aware of, or has received any notice or claim of, any conflict with its rights or the asserted rights of others regarding the LICENSES or any other intellectual property constituting ACQUIRED ASSETS or otherwise used in the BUSINESS. Except as set forth in Part 4.1.11 of the SCHEDULE, none of BK, WCI-LTD or BK-LTD has been required to pay (nor has any third party asserted any claim for) any royalty, license fee or similar type of compensation in connection with the conduct of the BUSINESS as it is now or heretofore has been conducted. The conduct of the BUSINESS by BK and BKL in the ordinary course does not infringe upon any intellectual property of any third parties.

4.1.12 Consents, Approvals, Etc. Except for the applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, no filing with or consent or approval of any court, regulatory authority or other public body, domestic or foreign, or third party is necessary in order for WCI and its affiliates to consummate the transactions contemplated by this Agreement.

4.1.13 Liabilities. None of BK, WCI-LTD or BK-LTD has any outstanding claims, liabilities or indebtedness, contingent or otherwise, except as set forth in the CURRENT BALANCE SHEET or referred to in the footnotes thereto, other than liabilities incurred subsequent to the date of the CURRENT BALANCE SHEET in the ordinary course of business not involving borrowings by BK or BKL and other than executory obligations of BK, WCI-LTD or BK-LTD to be performed after the CLOSING under the CONTRACTS

listed in Part 4.1.8 of the SCHEDULE and under the other CONTRACTS not required to be listed in Part 4.1.8 of the SCHEDULE due to the materiality thresholds contained in Section 4.1.8.

4.1.14. Disclosure. None of this Agreement, the SCHEDULE, any Exhibit or certificate attached hereto or delivered pursuant to this Agreement or any document or statement in writing which has been supplied by or on behalf of WCI, BK, WCI-LTD or BK-LTD in connection with the transactions contemplated by this Agreement, taken as a whole, contains any untrue statement of a material fact or, taken as a whole, omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading; provided that this Section 4.1.14 shall not apply to any facts describing (a) the construction equipment industry generally, (b) the United States or the United Kingdom economies generally or (c) the appropriations process of the United States Congress under the Intermodal Surface Transportation Efficiency Act.

4.1.15. Inventory. The INVENTORIES are items of a quality usable or saleable by the BUSINESS in the ordinary course of business consistent with past practice, except for obsolete or defective materials for which adequate reserves are maintained on the books of the BUSINESS.

4.1.16. Accounts Receivable; Security Interests; Product Returns.

(a) The RECEIVABLES represent sales actually made in the

ordinary course of business consistent with past practice, and are reflected on the books of the BUSINESS net of adequate reserves for doubtful accounts, and none of such RECEIVABLES is subject to any counterclaim or set-off.

(b) All security interests held by BK, WCI-LTD or BK-LTD in respect of dealer inventory financings represent valid first priority perfected liens on the property purported to be secured thereby.

(c) There are no liabilities for PRODUCT returns other than those arising in the ordinary course of BUSINESS consistent with past practice. To the best knowledge of WCI, there are no threatened claims for any PRODUCT returns relating to the BUSINESS.

4.1.17 Confirmation. The representations and warranties of WCI set forth in this Section 4.1 shall be true and correct in all material respects at and as of the CLOSING (as though such representations and warranties were made anew at and as of such date and any references, express or implied, to the date of this Agreement shall be deemed also to be references to the CLOSING).

4.1.18 Disclaimer of Other Warranties. BUYER acknowledges that it has been afforded the opportunity to inspect the ACQUIRED ASSETS and the records relating thereto and that, subject to the terms and conditions of this Agreement, it is satisfied with the condition thereof, and OTHER THAN AS CONTAINED IN THIS AGREEMENT AND THE SCHEDULE, WCI HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY TO BUYER OF ANY KIND WHATSOEVER. THUS, SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THE SALE AND TRANSFER OF THE ACQUIRED ASSETS PROVIDED FOR HEREIN IS MADE "AS IS" AND "WHERE IS"; FURTHERMORE, WITH THE EXCEPTION OF THE REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT AND THE SCHEDULE, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WHICH ATTACH TO THE ACQUIRED ASSETS OR AS TO

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THE CONDITION, QUALITY AND/OR PERFORMANCE CAPABILITY OF ANY OF THE ACQUIRED ASSETS AND EXCEPT AS SET FORTH ELSEWHERE IN THIS AGREEMENT, BUYER IS ASSUMING THE SOLE RISK OF ANY DEFECTS IN SUCH ACQUIRED ASSETS OR DEFECTS IN SIMILAR PRODUCTS HEREAFTER MANUFACTURED BY BUYER, WHETHER OR NOT SAID DEFECTS RESULT FROM CONSTRUCTION OR DESIGN.

4.2 Representations and Warranties of BUYER. BUYER hereby represents and warrants to WCI as follows:

4.2.1 Corporate Data and Authority of BUYER.

(a) BUYER is a corporation duly organized, validly existing and in good standing under the laws of Delaware.

(b) BUYER has full power and, subject to the receipt by BUYER of the approval of its Board of Directors, authority to purchase and own the ACQUIRED ASSETS, to assume the ASSUMED LIABILITIES, and to conduct the BUSINESS to be transferred to BUYER hereunder at the CLOSING and to perform its other undertakings hereunder.

(c) Subject to the receipt by BUYER of the approval of its Board of Directors, the execution, delivery and performance of this Agreement and all related documents delivered by BUYER at the CLOSING will have been duly authorized by all necessary corporate action on the part of BUYER and will constitute valid and binding agreements of BUYER, enforceable against BUYER in accordance with the respective terms thereof, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the availability of the remedy of specific performance.

(d) Subject to the receipt by BUYER of the approval of its Board of Directors, the consummation of the transactions contemplated hereby will not conflict with the constitutive documents of BUYER.

(e) The consummation of the transactions contemplated hereby will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which BUYER is a party or by which it is bound. Neither BUYER nor any subsidiary thereof is in default with respect to any agreement or instrument evidencing indebtedness for money borrowed or in the performance, observance or fulfillment of any covenant or condition in relation thereto.

4.2.2 Litigation and Other Matters. There are no actions, suits or proceedings pending or to BUYER's knowledge threatened against or affecting BUYER or any subsidiary thereof which may result in any material adverse change in the business, operations, properties or assets or in the condition, financial or otherwise, of BUYER or any subsidiary thereof.

ARTICLE V - COVENANTS

5.1 Covenants of WCI. WCI covenants as follows:

5.1.1 Between the date of this Agreement and the CLOSING, and except as may otherwise be provided in this Agreement, WCI shall and shall cause BK, WCI-LTD and BK-LTD to carry on the BUSINESS in the ordinary course, consistent with its present practice and policies and WCI will not enter into (or permit BK, WCI-LTD or BK-LTD to enter into) any agreement or transaction except in such usual and ordinary course of business except as

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might be otherwise provided herein without the prior written consent of BUYER. Between the date of this Agreement and the CLOSING, WCI shall cause BK, WCI-LTD and BK-LTD to use their reasonable best efforts, in the ordinary course of business, to preserve intact their respective business organizations, keep available the services of their officers and employees and maintain satisfactory relationships with licensors, suppliers, distributors, clients and others having business relationships with them, and BUYER shall cooperate with WCI in the performance of WCI's obligations in this sentence (provided that BUYER shall not be obligated to incur any obligation or make any commitment to any person or entity in connection with such cooperation). Prior to the CLOSING, except as may be first approved in writing by the BUYER, WCI shall cause BK, WCI-LTD and BK-LTD to refrain from (a) increasing the level of compensation payable to any officer, employee or agent, except for normal merit raises in accordance

with past practice, (b) making any bonus, pension, retirement or other employee benefit payment to or with any such persons, except those that may accrue under plans identified in Part 4.1.8(c) of the SCHEDULE and except as described to BUYER in the WCI LETTER (as defined in Section 4.1.3(a)), or (c) making any material amendments to any of such plans or the benefits thereunder.

5.1.2 During the period from the date of this Agreement to the CLOSING, WCI shall supply to BUYER such information concerning the ACQUIRED ASSETS and the operation of the BUSINESS as BUYER shall reasonably request. Without limiting the generality of the foregoing, WCI shall permit BUYER and its officers, agents, lawyers, accountants and other representatives to examine the ACQUIRED ASSETS, wherever located, and shall furnish such representatives with all such information concerning the ACQUIRED ASSETS and the operation of the BUSINESS as they may reasonably request, and BUYER shall be permitted to make extracts from, or copies of, any of the records of WCI in this regard. All information so obtained by BUYER shall be subject to the provisions of Section 5.2.6.

5.1.3 At the CLOSING, WCI shall transfer or cause to be transferred title to the REAL PROPERTIES owned by WCI-LTD or BK-LTD to BUYER by transfer, conveyance or assignment, as applicable, subject only to PERMITTED LIENS.

5.1.4 For a period of three (3) years after the CLOSING, WCI shall not and shall insure that its affiliates will not disclose or use any confidential business information related to the BUSINESS; provided, however, that WCI and such affiliates shall at all times be free to disclose or use such information (a) as shall be necessary for the accounting procedures and tax returns of WCI and such affiliates, (b) such as may be required by subpoena or court or governmental proceedings or otherwise required by law and then only with as much prior written notice to BUYER as is practical under the circumstances, (c) which after the CLOSING becomes generally available to the public other than as a result of disclosure by WCI or any of WCI's affiliates or representatives or (d) which after the CLOSING becomes available to WCI or any of such affiliates on a non-confidential basis from a source other than BUYER, any of its affiliates, or any of their respective representatives, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to BUYER or any other party with respect to such confidential business information.

5.1.5 For a period of ten (10) years after the CLOSING and thereafter upon proof of need therefor for legitimate business purposes, to the extent that WCI or any successor thereto is reasonably able by virtue

of the availability of any books, records and qualified personnel relating to the BUSINESS, and if it can be done without unduly disrupting WCI's or its affiliates' businesses, WCI shall (i) make or cause to be made available to BUYER, its related companies or successors, and permit BUYER and its agents to inspect and copy, such books and records and (ii) assist in arranging discussions with (and calling as witnesses of BUYER) officers, employees and agents of WCI on matters which directly relate to the BUSINESS, subject to the reimbursement of WCI of any actual out-of-pocket

expenses incurred by WCI in the performance of its obligations under this Section 5.1.5.

WCI shall use its best efforts to retain such books and records to be retained for such period. Before WCI destroys any of such books and/or records, WCI shall so advise BUYER and offer BUYER a reasonable opportunity to take possession of all such books and records. If WCI wishes to destroy any such books and records during such period, WCI shall give BUYER at least sixty days' prior written notice so that BUYER may take possession of such books and records deemed important by BUYER. If BUYER does not take possession or otherwise remove such books and records from WCI's premises within such sixty-day period, WCI may destroy such books and records.

5.1.6 As soon as practicable after the CLOSING, but in no event later than 90 days thereafter, WCI shall transfer to (and in the name of) BK all intellectual property registrations that are in the name of WCI or any of its affiliates (other than BK) that relate to intellectual property included in the ACQUIRED ASSETS of BK.

5.1.7 Subject to Section 5.1.8 below, WCI shall take all steps necessary to ensure that as of the CLOSING, BK shall be the exclusive owner of, and shall have the exclusive right to use (other than the limited right of the Purchasers to use the "Blaw-Knox" name as specified in the Blaw-Knox Trademark Agreement referred to in Section 3.3.4 above), the "Blaw-Knox" trade name and trademark and logo (both with and without the diamond).

5.1.8 WCI shall use its best efforts to negotiate a consensual termination of the Trademark Agreement effective June 30, 1987 between Italimpianti of America, Incorporated ("IAI") and WCI (the "IAI Trademark Agreement"). In the event that, notwithstanding WCI's best efforts as specified in the preceding sentence, WCI is unable to negotiate a consensual termination of the IAI Trademark Agreement prior to the CLOSING, then (a) the FINAL CASH PRICE and the PRELIMINARY CASH PRICE shall automatically be reduced by US$250,000 and (b) WCI shall cause the IAI Trademark Agreement to be assigned to BK, at no cost to BK.

5.1.9 Prior to the CLOSING, WCI shall cause the master equipment lease dated May 6, 1988 between WCI and XL/Datacomp, Inc. ("Datacomp"), and any software or other licenses or agreements entered into by WCI or any of its affiliates (other than BK) that constitute ACQUIRED ASSETS of BK to be assigned to BK, at no cost to BK, and shall deliver to BUYER an acknowledgment of Datacomp consenting to such assignment.

5.1.10 Prior to the CLOSING, WCI shall cause the trademark agreement referred to in Part 1.1.5(b) of the SCHEDULE, and the patent license referred to in Part 1.6(b) of the SCHEDULE, each between BK and BK-LTD, to be terminated in full, at no cost to BK, pursuant to documentation reasonably satisfactory to BUYER or, at BUYER's election, to be assigned to BUYER or its designee(s), at no cost to BUYER or such designee(s), pursuant to documentation reasonably satisfactory to BUYER.

5.1.11 WCI will and will cause its affiliates and advisors to immediately cease any existing discussions or negotiations with any third

parties conducted prior to the date hereof with respect to any merger, business combination, sale of assets (other than sales of inventory in the ordinary course of business consistent with past practice), purchase of assets (other than purchases permitted by this Agreement), sale or purchase of shares of capital stock or other securities or similar transaction involving any third party and the BUSINESS (an "ACQUISITION TRANSACTION"). WCI will not and will ensure that none of its affiliates or any directors, officers, employees or advisors shall, directly or indirectly, encourage, solicit, participate in or initiate discussions or negotiations with, or provide any information to, any corporation, partnership, person or other entity or group (other than BUYER or its respective affiliates, directors, officers and employees) concerning any ACQUISITION TRANSACTION. WCI will immediately communicate to BUYER any inquiries or proposals received by it or its affiliates or advisors that are brought to the attention of Daniel Elliott or Wayne Schierbaum of WCI or Henri Talerman of Lehman Brothers regarding an ACQUISITION TRANSACTION and the terms thereof.

5.2 Covenants of BUYER. BUYER covenants as follows:

5.2.1 For a period of ten (10) years after the CLOSING, and thereafter upon proof of need therefor for legitimate business purposes, to the extent that BUYER or any successor thereto is reasonably able by virtue of the availability of any books, records and qualified personnel relating to the BUSINESS, and if it can be done without unduly disrupting BUYER's or its affiliates' businesses, BUYER shall, (i) make or cause to be made available to WCI all books and records included in the ACQUIRED ASSETS that are needed by WCI or any of its related companies and permit WCI and its agents to inspect and copy such books and records and (ii) assist in arranging discussions with (and the calling as witnesses of WCI) officers, employees and agents of BUYER and its affiliated companies on matters which directly relate to the BUSINESS subject to the reimbursement of BUYER for any actual out-of-pocket expenses incurred by BUYER in the performance of its obligations under this Section 5.2.1.

BUYER shall use its best efforts to retain such books and records to be retained for such period. In the event BUYER should discontinue the manufacture or sale of the PRODUCTS or similar products, before BUYER destroys any of the books and/or records constituting part of the ACQUIRED ASSETS transferred to BUYER by WCI pursuant to this Agreement, BUYER shall so advise WCI and offer WCI a reasonable opportunity to take possession of all such books and records. If BUYER wishes to destroy any such books and records during such period, Buyer shall give WCI at least sixty days' prior written notice so that WCI may take possession of such books and records deemed important by WCI. If WCI does not take possession or otherwise remove such books and records from Buyer's premises within such sixty-day period, Buyer may destroy such books and records.

5.2.2 After the CLOSING, and for the remainder of any standard express written warranty period or express extended or expanded warranty period relating to the PRODUCTS referred to below, BUYER acknowledges that BK (or a successor company) shall have the obligation to BK's distributors to perform BK's standard express written warranties and express written extended and expanded warranties for those PRODUCTS manufactured and/or sold by BK prior to the CLOSING by repairing and/or replacing the defective part or parts of the affected PRODUCT in accordance with and

subject to the

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limitations of the standard express written warranty terms and conditions and the express written extended and expanded warranty terms and conditions, respectively, applicable to those PRODUCTS (the "WARRANTY OBLIGATIONS"); provided, however, that neither BK nor any successor company shall have any obligations with respect to such PRODUCTS for (i) implied warranties, if any, whether imposed as a matter of law or otherwise or (ii) any express warranties other than the standard express warranty attached as Part 5.2.2 of the SCHEDULE or (iii) any extended or expanded warranties other than the express written extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE.

5.2.3 After the CLOSING neither BUYER nor any successor to the BUSINESS shall use or make reference to the names "White Consolidated Industries, Inc." or "White", the initials WCI, the slogan "One of The White Consolidated Industries WCI" or any other trade names or trademarks of WCI or any affiliated company thereof, other than those included in the ACQUIRED ASSETS, nor state or imply that BUYER is an agent of WCI, or that WCI or any affiliated company thereof is in any way responsible for products produced by BUYER; any reference to WCI shall be obliterated from all printed materials and facilities relating to the BUSINESS; and BUYER shall, to the extent practical and as soon as possible after the CLOSING, take steps to add language to its products, letterheads, warranty and advertising literature or other printed public materials constituting ACQUIRED ASSETS and to take such other actions at the facilities included in the ACQUIRED ASSETS to indicate clearly that the BUSINESS is being operated, and that the ACQUIRED ASSETS are owned, by BUYER or an affiliate thereof.

5.2.4 BUYER shall establish new bank accounts in the name of the companies in which it intends to continue the BUSINESS in the United States and the United Kingdom and, effective the first business day after the CLOSING, such new bank account and appropriate check stock therefor shall be used for all funds pertaining to the conduct of the BUSINESS after the CLOSING by the BUYER. WCI will cooperate and will cause its affiliates to cooperate with BUYER in establishing such new bank accounts promptly after execution of this Agreement to the extent necessary to permit BUYER to establish such new bank accounts as of the date of the CLOSING.

5.2.5 BUYER shall use its reasonable best efforts from time to time, at the reasonable request of WCI, to cooperate with WCI in providing WCI access to the records of BUYER's business and, through qualified employees of BUYER, with information and technical assistance in respect of any existing claims or litigation or claims or litigation subsequently brought against WCI (including, without limitation, any Workers' Compensation claims included in the Excluded Liabilities) involving the conduct of the BUSINESS prior to the CLOSING or any PRODUCTS manufactured and/or sold by WCI prior to the CLOSING, including requests for the production of documents, supplying literature and information, providing answers to interrogatories, product inspections and reports thereon and the consultation and appearance of such qualified employees of BUYER on a reasonable basis as an expert or fact witness in trials subject only to the reimbursement of BUYER for reasonable actual out-of-pocket expenses

incurred by BUYER in the performance of its obligations under this Section 5.2.5. BUYER shall use its best efforts to retain such documents and records set forth in Part 5.2.5 of the SCHEDULE for 10 years after the CLOSING DATE as are necessary or useful in defending the foregoing types of claims and provide WCI with reasonable access thereto.

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5.2.6 In the event the transactions contemplated by this Agreement shall not be consummated, BUYER shall keep strictly confidential all of the information that BUYER, its representatives or affiliates shall have obtained, either before or after the date of this Agreement, about WCI and the BUSINESS, and BUYER shall promptly deliver to WCI all information, work papers, copies of documents and all other items generated or obtained by BUYER, its representatives and affiliates in its investigations, and all copies thereof and BUYER shall refrain from using or disclosing to others any such information, papers, or documents.

The obligation to keep such information confidential and to refrain from using such information shall not apply to any information which (a) becomes generally available to the public other than as a result of a disclosure by BUYER or any of its representatives, (b) is necessary for the accounting procedures and tax returns of BUYER and its affiliates, (c) may be required by subpoena or court or governmental proceedings or otherwise required by law and then only with as much prior written notice to WCI as is practical under the circumstances, (d) was in the possession of BUYER prior to it being furnished to BUYER by or on behalf of WCI, provided that the source of such information was not known by BUYER to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to WCI or any other party with respect to such information or (e) becomes available to BUYER on a non-confidential basis from a source other than WCI or any of WCI's representatives, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to WCI or any other party with respect to such information.

5.2.7 BUYER shall provide WCI with a copy of any notice that BUYER submits to any governmental agency in respect of matters referred to in Section 3.2(h) above and, to the extent reasonably practicable, shall give WCI an opportunity to comment on the substance of such notice and/or to file such supplemental notices with the relevant governmental agencies as WCI shall deem appropriate, provided that nothing contained in this Section 5.2.7 shall limit or otherwise affect BUYER's or BK's ability to take such actions as it may deem appropriate under applicable law or its internal policies or procedures.

5.2.8 With respect to the PATENT CLAIM referred to in Section 3.2(n) above, in the event that BK or BUYER or any other entity conducting the BUSINESS shall at any time be prohibited or limited in its use of any of the intellectual property referred to in the Bethea Letter because of an actual or alleged infringement occurring in whole or in part prior to the CLOSING, then WCI will obtain for BK or BUYER or such other entity, as applicable, at WCI's own cost, an indefinite, royalty-free right to use such intellectual property in the conduct of the BUSINESS. BUYER shall

cooperate with WCI in the performance of WCI's obligations under this Section 5.2.8 to the extent described in Section 5.2.5.

5.2.9 In the event that Electrolux Finance Ltd. ("ELECTROLUX FINANCE") shall take possession of any PRODUCTS leased by ELECTROLUX FINANCE to customers of the BUSINESS as a result of a default by such customers under such leasing arrangement, then, for so long as BUYER shall control the entity conducting the UK portion of the BUSINESS, BUYER will cause such entity to cooperate with ELECTROLUX FINANCE with respect to the possible resale or other disposition of such repossessed PRODUCTS.

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5.3 Mutual Covenants. WCI and BUYER covenant as follows:

5.3.1 In the event that WCI is in receipt after the CLOSING of funds due BUYER, WCI shall forthwith pay the amount it received to BUYER, and if BUYER is in receipt of funds due WCI, BUYER shall forthwith pay the amount it received to WCI. In the event that WCI is legally required to pay and makes a payment after the CLOSING for an obligation of BUYER, BUYER shall forthwith reimburse WCI for such payment, and if BUYER is legally required to pay and makes a payment for an obligation of WCI, WCI shall forthwith reimburse BUYER.

5.3.2 WCI and BUYER will cooperate with each other in the development and distribution of all news releases and other public information disclosures relating to the proposed purchase and sale transaction and any material transactions incident thereto. Neither BUYER nor WCI will promulgate any such release or make any other public disclosures without the prior consent of the other party or its authorized representative. The two preceding sentences shall not apply to any disclosure that is required to be made by applicable law, rule or regulation, including rules and regulations of applicable securities exchanges, provided that before any party shall make any such disclosure, to the extent reasonably practicable such party shall provide the other party with prior notice of such disclosure.

ARTICLE VI - EMPLOYEES AND EMPLOYEE BENEFITS

6.1 Provisions relating to All Employees.

6.1.1 All employees exclusively engaged in the BUSINESS immediately prior to the CLOSING (the "EMPLOYEES") shall either remain employees of BK or become employees of BUYER or one of its subsidiaries on and as of the CLOSING. If BUYER at any time within sixty (60) days after the CLOSING engages in a "mass layoff" or "plant closing" as these terms are defined in the Worker Adjustment and Retraining Notification Act of 1988 ("WARN"), BUYER shall be fully responsible for and indemnify and hold WCI harmless against any liability arising as a result of such "mass layoff" or "plant closing" under WARN. If BK at any time within sixty (60) days before the CLOSING engages in such a "mass layoff" or "plant closing," WCI shall be fully responsible for and indemnify and hold BK and BUYER harmless against any liability arising as a result of such "mass layoff" or "plant closing."

6.1.2 (a) Prior to the CLOSING, BK and BKL have each provided benefits (other than pension benefits) to EMPLOYEES and to former employees of the BUSINESS and retirees of certain predecessors (collectively "FORMER EMPLOYEES") and their eligible dependents (where applicable) under the BENEFIT PLANS identified in Part 4.1.8(c) of the SCHEDULE. Except as otherwise expressly provided in this Agreement, all benefits and coverages provided to such EMPLOYEES and their eligible dependents under the BENEFIT PLANS shall terminate as of the CLOSING except for those claims and expenses incurred prior to the CLOSING that are eligible for payment under the terms of WCI's BENEFIT PLANS.

(b) BUYER shall provide or cause one of its affiliates to provide, effective as of the CLOSING, for all EMPLOYEES and their dependents, employee benefits which BUYER determines are appropriate under

the circumstances. Without limiting the scope of the foregoing, BUYER shall provide or cause one of its affiliates to provide, beginning as of the CLOSING, to all EMPLOYEES and FORMER EMPLOYEES and their eligible dependents, such group health benefit coverage as may be required to eliminate any and all obligations of WCI or its subsidiaries or other affiliates to provide "continuation coverage" for such persons under Sections 601 through 607 of ERISA or under Section 4980B of the CODE (as a condition to the avoidance of a tax thereunder).

6.1.3 BUYER shall furnish WCI any payroll data necessary to enable WCI to properly report WCI's Federal, State and local, Social Security and other payroll tax data with respect to BK for the period January 1, 1994 through the CLOSING. Upon WCI's request, BUYER shall deliver to the EMPLOYEES Federal and State W-2 forms required to be furnished by WCI for the period January 1, 1994 through the CLOSING.

6.2 Benefits Relating to USA Salaried Employees (NON-UNION PLANS).

6.2.1 BK's Non-Union Plans. EMPLOYEES located in the United States who are not covered by a COLLECTIVE BARGAINING AGREEMENT ("USA Non-Union Employees") are covered by the White Consolidated Industries, Inc. Pension Plan For Non-Bargaining Salaried Employees, a tax-qualified defined benefit pension plan ("WCI's Non-Union Pension Plan") and the White Consolidated Industries, Inc. Retirement Savings Plan for Non-Bargaining Employees, a tax-qualified 401(k) plan ("WCI's Non-Union Savings Plan"), copies of which have been furnished to BUYER.

(a) BUYER shall neither adopt nor become a sponsoring employer of WCI's Non-Union Pension and Savings Plans.

(b) WCI has informed BUYER that each USA Non-Union Employee shall be considered by WCI to have terminated participation in WCI's Non-Union Pension and Savings Plans as of the CLOSING. Accordingly, the eligibility of each such USA Non-Union Employee for a benefit under WCI's Non-Union Pension and Savings Plans and the amount of such benefits shall be determined under the terms of WCI's Non-Union Pension and Savings Plans as in effect as of the CLOSING (as such Plans may be amended by WCI) on

the same basis as such determination would be made for any other employee covered by such Plans whose participation in such plans with WCI completely and finally terminates as of the CLOSING without regard to the transactions contemplated by this Agreement.

6.3 Collective Bargaining Agreements and Hourly Employees Covered Thereby.

6.3.1 Collective Bargaining Agreement. Hourly Employees of the BUSINESS are covered by the COLLECTIVE BARGAINING AGREEMENTS.

6.3.2 BK Retirement Benefit Plan.

For employees who are covered by the BK COLLECTIVE BARGAINING AGREEMENT ("Union Employees"), WCI currently maintains the Blaw-Knox Construction Equipment Retirement Plan ("BLAW-KNOX PLAN"), a copy of which is set forth in Part 6.3.2 of the SCHEDULE.

(a) On the CLOSING DATE, BUYER shall adopt and assume or cause BK to adopt and assume, and shall replace or cause BK to replace WCI as the sole sponsoring employer of the BLAW-KNOX PLAN, subject to any amendments which BUYER may adopt to the BLAW-KNOX PLAN after the CLOSING.

(b) Effective as of the CLOSING DATE, WCI shall cause Mellon Bank, N.A., as master trustee pursuant to a Master Trust Agreement with WCI effective January 2, 1992 (the "Master Trust"), to segregate from all other assets held in the Master Trust a cash amount equal to the equitable share of the assets of the BLAW-KNOX PLAN in such Master Trust and, pursuant to Section 22.1 of the Master Trust, to hold such assets as trustee of a separate trust for the BLAW-KNOX PLAN (the "Pension Trust"). The equitable share of the BLAW-KNOX PLAN in the Master Trust shall be determined by Mellon Bank, N.A. in accordance with the terms of the Master Trust. On the CLOSING DATE, or within 90 days thereafter, BUYER shall establish a separate trust, or a separate plan trust account within BUYER'S master pension trust, for the BLAW-KNOX PLAN ("BUYER'S TRUST") which satisfies the requirements for tax exemption pursuant to Section 501(a) of the CODE (as part of a plan which is qualified under Section 401(a) of the CODE). On or within 90 days of the establishment of BUYER'S TRUST, WCI shall direct Mellon Bank, N.A. to transfer to BUYER'S TRUST in cash all of the assets of the BLAW-KNOX PLAN then held by Mellon Bank, N.A. in the Pension Trust. Prior to the transfer of assets, WCI will provide to BUYER a written schedule of the amount of such assets (and the methodology used in determining such amount), prepared by Mellon Bank, N.A., which schedule shall be subject to review by BUYER's actuary for the purpose of confirming that the calculation was made in accordance with the terms of the Master Trust Agreement and the actuarial assumptions described in the Schedule entitled "White Consolidated Industries Inc. Blaw-Knox Construction Equipment Corporation Hourly Pension Plan (040)-Statement of Actuarial Assumptions and Actuarial Cost Method" (attached hereto as Part 6.3.2(b) of the SCHEDULE). In the event that BUYER does not send WCI written notice of its objections within 45 days following receipt of Mellon Bank, N.A.'s schedule, then such evidence shall be deemed to be approved. In the event that BUYER does send WCI written notice of its objections within 45 days as described above, then WCI's actuary and BUYER's actuary will attempt to reach agreement as to any disputed matter relating to the transfer. In the event they do not reach

agreement, then WCI's actuary and BUYER's actuary will select a third actuary, the expense of which shall be borne equally by BUYER and WCI, to make a final and conclusive determination of the amount of the transfer.

(c) WCI shall adopt appropriate amendments to the BLAW-KNOX PLAN and the Pension Trust, and BUYER and WCI shall take all other actions, as may be necessary or appropriate to establish BUYER as successor to WCI as to all powers, duties and obligations under or with respect to the BLAW-KNOX PLAN and, effective as of the CLOSING DATE, BUYER shall assume such powers, duties and obligations, provided that all such amendments and actions shall be subject to the prior review and approval of BUYER. BUYER shall amend the BLAW-KNOX PLAN to comply with the requirements of the CODE relating to the qualifications of such PLAN under Section 401(a) of the CODE and exemption of its related trust from income taxation pursuant to Section 501(a) of the CODE. Such amendment shall be made effective retroactively to the dates that are required pursuant to the Tax Reform Act of 1986 (P.L. 99-514), the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647), the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239), the Revenue Reconciliation Act of 1990 (P.L. 101-508) and the regulations and rulings under such laws (collectively referred to as "TRA '86 Requirements"); shall be adopted by the BUYER not later than the time permitted pursuant to the provisions of Section 401(b) of the CODE, Treasury Regulations Section

1.401(b)-1, IRS Notice 90-73, IRS Announcement 92-29, IRS Notice 92-36, and other pronouncements made pursuant to Treasury Regulation Section 1.401(b)-1(e); and shall include therein provisions which reflect all of the administrative practices pertinent to the TRA '86 Requirements that have been implemented prior to the CLOSING DATE with respect to the BLAW-KNOX PLAN. WCI shall cooperate with BUYER in determining which administrative procedures, if any, have been implemented prior to the CLOSING DATE.

(d) After adopting and assuming the BLAW-KNOX PLAN as of the CLOSING DATE, (i) BUYER shall have full responsibility for the maintenance, operation or termination of the BLAW-KNOX PLAN and (ii) without limiting the generality of the foregoing, BUYER shall be responsible for and shall indemnify and hold WCI harmless against any liability, obligation, claim, expense, loss, tax or penalty arising out of the BLAW-KNOX PLAN, including (A) any and all pension and survivor benefits provided for or which the sponsoring employer is obligated to provide under the BK COLLECTIVE BARGAINING AGREEMENT, (B) all claims for benefits under the BLAW-KNOX PLAN, (C) compliance with the reporting and disclosure requirements of the CODE and ERISA for Plan Years ending after December 31, 1993 with respect to the BLAW-KNOX PLAN (except that any such report or disclosure required to be made prior to the CLOSING shall be the responsibility of WCI), (D) satisfaction of the minimum funding standards arising under the CODE and ERISA with respect to the BLAW-KNOX PLAN for Plan Years ending after December 31, 1993, (E) any and all liability relating to the termination of the BLAW-KNOX PLAN and (F) any amendment adopted by BUYER to the BLAW-KNOX PLAN that adversely affects the qualification of the BLAW-KNOX PLAN under Section 401(a) of the CODE for

any year, and (G) the failure to comply with the requirements of Section 6.3.2(c).

(e) If BUYER causes BK to assume the BLAW-KNOX PLAN, then all references to BUYER in this Section 6.3 (other than the reference in the first line of Section 6.3.2(a), the fourteenth line of Section 6.3.2(b), and the first and second lines of this Section 6.3.2.(e)) shall be deemed to be references to BK.

6.4 Pension Benefits Relating to United Kingdom Employees.

6.4.1 Information Concerning the White Consolidated International Holdings Pension Plan. With respect to employees of BKL ("UK EMPLOYEES"), WCI-LTD presently maintains the White Consolidated International Holdings Pension Plan, including a supplemental Executive Pension Plan (collectively the "BKL's UNITED KINGDOM PLAN"), a copy of which is set forth in Part 6.4.1 of the SCHEDULE.

6.4.2 Assumption of BKL's UNITED KINGDOM PLAN. (a) As of the CLOSING, BUYER shall adopt and assume or cause the entity designated by it to adopt and assume BKL'S UNITED KINGDOM PLAN and shall succeed or cause such entity to succeed to all rights and obligations of WCI or its nominee thereunder.

(b) Notwithstanding anything contained in this Agreement to the contrary, WCI agrees to cause the value of the assets of BKL's UNITED KINGDOM PLAN on the CLOSING DATE to be no more than U.K. 23,000 pound sterling
less than the accrued liabilities (allowing for, inter alia, projected salary increases) of BKL's UNITED KINGDOM PLAN on the CLOSING DATE, as determined by applying the actuarial and financial assumptions and methods described in the letter from David L. Lindsay of C E Health (Employee Benefits) Ltd. to Mr. E. B. Halton of BK-LTD, dated February 28, 1992 (attached hereto as Part 6.4.2 of the SCHEDULE) to BKL's UNITED KINGDOM PLAN benefit provisions

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in effect on the CLOSING DATE, but with such alterations as may be necessary to ensure that the benefit provisions comply with Article 119 of the Treaty of Rome. Any dispute between the parties arising out of this Section 6.4.2(b) shall be resolved in a manner similar to the dispute resolution procedures set forth in Section 6.3.2(b) above.

(c) BUYER shall have full responsibility for the maintenance and administration of BKL's UNITED KINGDOM PLAN and the trust thereunder, and for all expenses, liabilities and obligations with respect thereto, whether contingent, absolute, known or unknown, and WCI shall not have any such responsibility.

(d) If BUYER causes an entity designated by it to assume BKL's UNITED KINGDOM PLAN, then all references to BUYER in Section 6.4 (other than the reference in the second line of Section 6.4.2(a) and the first and second lines of this Section 6.4.2(d)) shall be deemed to be references to such entity.

6.5 The provisions of Sections 6.2.1 shall be subject in all respects to such modifications in WCI's Non-Union Pension and Savings Plans as may be required to comply with applicable law and to satisfy the

requirements for tax qualification. The provisions of Section 6.3.2 shall be subject in all respects to such modifications in BUYER's or BK's plans, as applicable, as may be required to comply with applicable law and to satisfy the requirements for tax qualification. The provisions of Section 6.4.2 shall be subject in all respects to such modifications in BKL's UNITED KINGDOM PLAN as may be required to enable BUYER or its designee to become the principal employer and to satisfy all requirements for Inland Revenue exempt approval.

6.6 Required Contributions. WCI shall cause BK and BKL to discharge any liabilities of BK and BKL on account of any expenses or liabilities of the BENEFIT PLANS, PENSION PLANS and OTHER EMPLOYEE PLANS for the period up to and including the date of the CLOSING.

ARTICLE VII - CONDITIONS TO CLOSING

7.1 Conditions to the Obligations of BUYER.

The obligations of BUYER to purchase the SHARES and the BKL ACQUIRED ASSETS under this Agreement are subject to the following conditions (unless waived in writing in whole or in part by BUYER):

7.1.1 WCI shall have furnished to BUYER:

(a) Certificate of Good Standing for WCI certified as of a recent date by the Secretary of State of Delaware; and

(b) Certificate of Good Standing for BK certified as of a recent date by the Secretary of State of Illinois; and

(c) Certificate of Good Standing for BK and WCI-LTD, each certified as of a recent date by the Secretary of State of Delaware; and

(d) A certificate of the Secretary or an Assistant Secretary of WCI certifying (i) as to the absence of amendments to the constitutive documents of BK; (ii) as to the absence of proceedings for dissolution

or liquidation of BK; (iii) a copy of the resolution or resolutions adopted by the Board of Directors of WCI, authorizing the execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby, and of AB Electrolux, authorizing the ELECTROLUX INDEMNITY AGREEMENT referred to below and the other transactions contemplated hereby; and (iv) as to the incumbency and signatures of officers; and

(e) A certificate of the Secretary or an Assistant Secretary of BK-LTD certifying (i) as to the absence of amendments to the constitutive documents of BK-LTD; (ii) as to the absence of proceedings for dissolution or liquidation of BK-LTD; (iii) a copy of the resolution or resolutions adopted by the Board of Directors of BK-LTD, authorizing the consummation of the transactions contemplated hereby; and (iv) as to the incumbency and signatures of officers; and

(f) A certificate of the Secretary or an Assistant Secretary of WCI-LTD certifying (i) as to the absence of amendments to the constitutive documents of WCI-LTD; (ii) as to the absence of proceedings for dissolution or liquidation of WCI-LTD; (iii) a copy of the resolution or resolutions adopted by the Board of Directors of WCI-LTD, authorizing the consummation of the transactions contemplated hereby; and (iv) as to the incumbency and signatures of officers.

7.1.2 WCI shall have performed in all material respects all of its agreements and covenants which are required to have been performed by it at or prior to the CLOSING.

7.1.3 The representations and warranties of WCI set forth in this Agreement and the SCHEDULE shall be correct in all material respects on and as of the CLOSING.

7.1.4 At the CLOSING, BUYER shall have received from the Senior Vice President-Law and General Counsel of WCI (with respect to U.S. law matters) and from Julie O'Niell, counsel to WCI-LTD and BK-LTD (with respect to U.K. law matters) an opinion dated the CLOSING, in form and substance reasonably satisfactory to BUYER, to the effect set forth in Subsections 4.1.1(a) through (e) and to the best knowledge of such counsel to the effect set forth in Subsection 4.1.4(a).

7.1.5 At the CLOSING, BUYER shall have received a certificate dated the CLOSING and signed by an authorized officer of WCI which evidences the compliance by WCI with the conditions contained in Sections 7.1.2, 7.1.3, 7.1.8 and 7.1.9.

7.1.6 The filing and waiting period requirements, if any, of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, relating to the transactions contemplated by this Agreement shall have been complied with.

7.1.7 BUYER shall have received certificates representing the SHARES, duly executed in blank, with all necessary transfer stamps affixed thereto and cancelled.

7.1.8 No action or proceeding shall have been instituted or, to the knowledge of WCI, threatened before a court or other government body or by any public authority to restrain or prohibit any of the transactions contemplated hereby.

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7.1.9 All indebtedness of WCI and its affiliates (and of directors, officers and employees of WCI, BK, WCI-LTD and BK-LTD, other than customary travel advances) to BK, WCI-LTD and BK-LTD shall have been repaid in full.

7.1.10 BUYER shall have received resignations of officers and directors of BK as designated by BUYER.

7.1.11 All legal matters relating to this Agreement and the consummation of the transactions contemplated hereby shall have been

completed to the reasonable satisfaction of counsel to BUYER.

7.1.12 AB Electrolux shall have executed and delivered to BUYER the Electrolux Indemnity Agreement in form and in substance as set forth in Exhibit A hereto ("ELECTROLUX INDEMNITY AGREEMENT"), and BUYER shall have further received an opinion of counsel to AB Electrolux, in form and in substance, and from counsel, acceptable to BUYER in its sole discretion.

7.1.13 The Board of Directors of BUYER shall have adopted resolutions approving this Agreement and the transactions contemplated hereby.

7.1.14 BUYER shall have received a complete, final SCHEDULE, which SCHEDULE shall be reasonably satisfactory to BUYER in form and in substance.

7.1.15 BUYER shall have completed its due diligence in respect of the BUSINESS and the transactions contemplated by this Agreement, and the results of such due diligence shall be reasonably satisfactory to BUYER.

7.2 Conditions to the Obligations of WCI.

The obligations of WCI to sell the SHARES and the BKL ACQUIRED ASSETS under this Agreement are subject to the following conditions (unless waived in writing in whole or in part by WCI):

7.2.1 BUYER shall have furnished WCI:

(a) a Certificate of Good Standing of BUYER, certified as of a recent date by the Secretary of State of Delaware; and

(b) a certificate of the Secretary or an Assistant Secretary of BUYER certifying (i) a copy of BUYER's By-laws; (ii) a copy of the articles of incorporation of BUYER; (iii) as to the absence of proceedings for dissolution or liquidation of BUYER; (iv) a copy of the resolution or resolutions adopted by the Board of Directors of BUYER, authorizing the execution, delivery and performance of this Agreement by BUYER; and (v) as to the incumbency and signatures of officers.

7.2.2 BUYER shall have performed in all material respects all of its agreements and covenants which are required to have been performed by it at or prior to the CLOSING.

7.2.3 The representations and warranties of BUYER set forth in this Agreement shall be correct in all material respects on and as of the CLOSING.

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7.2.4 At the CLOSING, WCI shall have received from Bernard D. Henely, Esq., Vice President and General Counsel of BUYER, an opinion dated the CLOSING, in form and substance reasonably satisfactory to WCI, to the effect set forth in Subsections 4.2.1(a) through (e) and to the best knowledge of such counsel to the effect set forth in Section 4.2.2.

7.2.5 At the CLOSING, WCI shall have received a certificate dated the CLOSING and signed by an authorized officer of BUYER which evidences the compliance by BUYER with the conditions contained in Sections 7.2.2, 7.2.3 and 7.2.9.

7.2.6 All legal matters relating to this Agreement and the consummation of the transactions contemplated hereby shall have been completed to the reasonable satisfaction of counsel to WCI.

7.2.7 The filing and waiting period requirements, if any, of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, relating to the transactions contemplated by this Agreement shall have been complied with.

7.2.8 At the CLOSING, WCI shall have received from BUYER the PRELIMINARY CASH PRICE.

7.2.9 No action or proceeding shall have been instituted or, to the best knowledge of BUYER, threatened before a court or other government body or by any public authority to restrain or prohibit any of the transactions contemplated hereby.

ARTICLE VIII - CLOSING

8.1 Closing. The "CLOSING" hereunder shall take place on the third business day following the satisfaction of the conditions set forth in Sections 7.1.6, 7.1.12, 7.1.13, 7.1.14, 7.1.15 and 7.2.7 above (such date, the "CLOSING DATE"), at 10:00 A.M., E.S.T., at the offices of White & Case, 1155 Avenue of the Americas, New York, New York (or at such other place and/or time as may be mutually agreed upon by the parties) and shall be effective as of twelve o'clock (12:00) midnight after the close of business on the day immediately preceding the CLOSING DATE. Notwithstanding the foregoing, in the event the CLOSING shall not have occurred on or prior to June 30, 1994, then either party may terminate this Agreement upon prior written notice to the other party.

8.2 WCI's Obligations. At the CLOSING, WCI shall deliver to BUYER the following:

8.2.1 The opinion of counsel for WCI specified in Section 7.1.4.

8.2.2 The certificates specified in Sections 7.1.1 and 7.1.5.

8.2.3 Appropriate instruments of transfer for the REAL PROPERTIES of BKL and any LEASEHOLDS of BKL, in form and substance satisfactory to BUYER.

8.2.4 A Bill of Sale and General Assignment (or other appropriate instruments of transfer) for the remainder of the ACQUIRED ASSETS of BKL, in form and substance satisfactory to BUYER.

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8.2.5 To the extent required by applicable law, an Assignment of the BKL COLLECTIVE BARGAINING AGREEMENT, in form and substance satisfactory to BUYER.

8.2.6 The unissued stock certificates, minute book and other corporate records of BK.

8.2.7 The Transitional Services Agreement in form and in substance as set forth in Exhibit B hereto ("TRANSITIONAL SERVICES AGREEMENT"), executed by WCI.

8.2.8 The Non-competition Agreement in form and in substance as set forth in Exhibit C hereto ("NON-COMPETITION AGREEMENT"), executed by WCI.

8.2.9 A non-foreign person affidavit as required by Section 1445 of the CODE.

8.2.10 The ELECTROLUX INDEMNITY AGREEMENT, executed by AB Electrolux, together with the opinion of counsel referred to in Section 7.1.12.

8.2.11 A certificate signed by an authorized officer of WCI to the effect that all liens (other than PERMITTED LIENS) on any of the ACQUIRED ASSETS, including any liens relating to the Revenue Bonds, have been fully released.

8.3 BUYER'S Obligations. At the CLOSING, BUYER shall deliver to WCI the following:

8.3.1 The opinion of counsel for BUYER specified in Section 7.2.4.

8.3.2 The certificates specified in Sections 7.2.1 and 7.2.5.

8.3.3 Evidence of transfer of Federal Funds or a certified or official bank check drawn on a bank satisfactory to WCI and payable to the order of WCI in the amount of the PRELIMINARY CASH PRICE as specified in Section 2.2.

8.3.4 The TRANSITIONAL SERVICES AGREEMENT, executed by BUYER.

8.3.4. The NON-COMPETITION AGREEMENT, executed by BUYER.

ARTICLE IX - MISCELLANEOUS

9.1 Further Assurance. At any time and from time to time after the CLOSING, WCI shall, upon the request and at the expense of BUYER, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged or delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney or assurances as may be required for the better assigning, transferring, granting, conveying, assuring and confirming to BUYER, or for aiding and assisting in the collection of or reducing to possession by BUYER, any of the ACQUIRED ASSETS or the SHARES.

9.2 Expenses. Except as otherwise provided herein, WCI and BUYER each shall bear their own expenses incurred in connection with this Agreement and the transactions contemplated herein, whether or not such transactions shall be consummated, including, without limitation, all fees of its counsel, actuaries and accountants.

9.3 Notices. All notices, requests and other communications hereunder shall be in writing and shall be deemed to have been fully given by the parties if addressed and delivered by hand or facsimile and confirmed by certified U.S. mail, with postage prepaid, to the addresses set forth below in this Section 9.3 for the parties (or to such other addresses as may be given by written notice in accordance with this Section 9.3).

If to WCI, to:
White Consolidated Industries, Inc.
11770 Berea Road
Cleveland, Ohio 44111
Attn: Legal Department
Facsimile: 216/252-8158

If to BUYER, to:

Clark Equipment Company
100 North Michigan Street
South Bend, Indiana
Attn: General Counsel
Facsimile: (219) 239-0237

9.4 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of all of the parties hereto, but shall not be assignable by either party without the prior written consent of the other, except that each of WCI and BUYER may engage in statutory mergers where it is the surviving company, and WCI may assign all or any part of its rights under this Agreement to any parent, affiliated or related company of WCI, provided that WCI shall remain primarily liable for all its obligations under this Agreement. Notwithstanding the foregoing, BUYER may at any time at or before the CLOSING designate one or more of its direct or indirect subsidiaries to acquire all or a portion of the SHARES and/or BKL ACQUIRED ASSETS or to assume all or a portion of the obligations or rights of BUYER hereunder; provided that such designation shall not relieve BUYER of any obligations expressly assumed by it hereunder.

9.5 Bulk Sales. BUYER hereby waives compliance by WCI with the provisions of the so-called bulk sales law of any jurisdiction, if and to the extent any such law may be held to apply to the transactions contemplated hereby, and WCI shall indemnify BUYER for any claim or liability on account of noncompliance with any such bulk sales laws.

9.6 Taxes. BUYER and WCI shall each pay one-half of any sales or other use, stamp, excise or transfer taxes (including those pertaining to the transfer of the REAL PROPERTIES) imposed by law in connection with the sales made to BUYER or its designee pursuant to this Agreement.

9.7 Severability. If any Section, Subsection, clause or provision of this Agreement shall be unenforceable, then such Section, Subsection, clause or provision shall be deemed to be deleted from this Agreement but every other Section, Subsection, clause and provision shall continue in full force and effect.

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9.8 Complete Agreement. This Agreement, the SCHEDULE, the Exhibits hereto, the waiver dated as of the date hereof between the parties hereto, the WCI LETTER (as defined in Section 4.1.3(a)), and the other documents and certificates delivered pursuant to the terms hereof set forth the entire understanding of the parties hereto with respect to the subject matters covered hereby and thereby and supersede all prior agreements, covenants, arrangements, communications, representations or warranties, whether verbal or written, by any officer, employee or representative of either party with respect to such subject matters.

9.9 Amendment and Termination. This Agreement may not be amended or terminated verbally, but only as expressly provided herein or by an instrument in writing duly executed by the parties hereto.

9.10 Brokers and Finders. Except as disclosed in Part 9.10 of the Schedule, WCI and BUYER each represents to the other that it has not dealt with, incurred any obligation or entered into any agreement with any person which might result in an obligation of the other party to pay a sales or brokerage commission or finder's fee in connection with the transactions dealt with and covered by this Agreement. Each party shall indemnify and hold harmless the other from any claim or demand for commission or other compensation by any broker, finder or similar agent claiming to have been employed by or on behalf of such party or arising out of a breach of the foregoing representation.

9.11 Waivers. Waiver by WCI or BUYER of any breach of or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

9.12 Survival of Representations, Warranties, Covenants, Etc.

9.12.1 All of the representations and warranties of WCI and BUYER contained herein and in the certificates or documents delivered in connection herewith shall survive for a period of three (3) years after the CLOSING.

9.12.2 The covenants, agreements and obligations of the parties in this Agreement and in the documents delivered in connection herewith shall survive the CLOSING.

9.13 Applicable Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of New York.

9.14 Headings. The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

9.15 Counterparts. More than one counterpart of this Agreement may be executed by the parties hereto, and each fully executed counterpart shall be deemed an original.

9.16 Third Party Beneficiaries. Each party hereto intends that this Agreement shall not inure to the benefit or create any right or cause of action in or on behalf of any person or entity, other than (a) the parties hereto, (b) their respective successors, assigns and designees to the extent set forth in Section 9.4, and (c) the indemnified persons described in Section 3.3.

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9.17 Affiliates. Except as otherwise expressly set forth in this Agreement, an "affiliate" of, or a person or entity "affiliated" with, a specified person or entity, shall mean a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

9.18 Draft SCHEDULE. For purposes of Section 7.1.14 above, the parties acknowledge that by attaching the draft SCHEDULE to this Agreement, BUYER shall not be deemed to have accepted such SCHEDULE or any item identified therein, it being understood that the final SCHEDULE must be reasonably acceptable to BUYER.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

WHITE CONSOLIDATED INDUSTRIES, INC.

By: /s/Daniel R. Elliott
Title:

CLARK EQUIPMENT COMPANY

By: /s/ Bernard D. Henely
Title:

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</TEXT>
</DOCUMENT>
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-----END PRIVACY-ENHANCED MESSAGE-----
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Attachment B

FORM 8-K

Current report filing

Filing Date: **1994-05-27** | Period of Report: **1994-05-27**
SEC Accession No. 0000109710-94-000015

FILER

CLARK EQUIPMENT CO /DE/

CIK:**109710**| IRS No.: **380425350** | State of Incorp.:**DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **001-05646** | Film No.: **94531042**
SIC: **3537** Industrial trucks, tractors, trailors & stackers

Business Address
100 N MICHIGAN ST
PO BOX 7008
SOUTH BEND IN 46634
2192390100

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

Current Report Pursuant
to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 13, 1994

CLARK EQUIPMENT COMPANY
(Exact name of registrant as specified in its charter)

Delaware	1-5646	38-0425350
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

100 North Michigan Street P. O. Box 7008 South Bend, Indiana (Address of principal executive offices)	46634 (Zip Code)
Registrant's telephone number including area code	(219) 239-0100

ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS

On May 13, 1994, Registrant acquired all of the outstanding capital stock ("Stock") of Blaw-Knox Construction Equipment Corporation ("BK"), a leading producer of asphalt paving equipment located in Mattoon, Illinois. These shares were purchased from White Consolidated Industries, Inc. ("WCI"), a wholly-owned subsidiary of AB Electrolux. In addition, on May 13, 1994, a wholly-owned subsidiary of the Registrant acquired the assets related to WCI's asphalt paving business in the United Kingdom ("Assets"). The Assets were acquired from White Consolidated International Holdings Ltd. and Blaw-Knox Construction Equipment Co., Limited.

Included among the assets acquired by Registrant (either directly through the purchase of the Assets or indirectly through the purchase of the Stock) are (1) plants in Rochester, England and Mattoon, Illinois at which asphalt paving equipment is manufactured, (2) machinery, equipment, tools, dies and fixtures used in the manufacture of asphalt paving equipment, (3) finished goods, raw materials, work-in-process and other inventory,(4) certain trademarks, patents and other intellectual property, and (5) receivables and contract rights. It is Registrant's current intention to continue to use these assets in the manufacture of asphalt paving equipment.

The aggregate purchase price for the Stock and Assets was approximately $134 million. The purchase price is subject to adjustment pursuant to the terms of the Agreement of Purchase and Sale dated April 20, 1994 between WCI and Registrant. In addition, Registrant paid $10 million to WCI for a covenant not to compete.

The funds used to consummate the acquisition of the Shares and Assets and to pay for the covenant not to compete came from Registrant's available cash, with the exception of $40 million which was borrowed by Registrant pursuant to Registrant's $100 Million Master Credit Agreement dated April 6, 1994. Of the amount borrowed pursuant to the Master Credit Agreement, $25 million was borrowed from PNC Bank and $15 million from Comerica Bank. These borrowings were repaid after two weeks upon the maturity of certain of Registrant's short term investments which had not yet matured at the time of the closing of the acquisition.

A copy of the Agreement of Purchase and Sale dated as of April 20, 1994 between WCI and Registrant is attached hereto as Exhibit (2).

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

Financial Statements

At this time, it is impracticable to file the financial statements and pro-forma financial information required to be filed in this report. These financial statements and pro-forma financial information will be filed as soon as practicable.

Exhibits

See attached Exhibit Index.

SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CLARK EQUIPMENT COMPANY

/s/ John J. Moran, Jr.
John J. Moran, Jr.
Assistant Secretary

Date: May 27, 1994

EXHIBITS LIST AND INDEX

Exhibit Number	Description	Filed Herewith Unless Otherwise Indicated
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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT dated as of April 20, 1994, by and between WHITE CONSOLIDATED INDUSTRIES, INC. ("WCI"), a Delaware corporation, and CLARK EQUIPMENT COMPANY ("BUYER"), a Delaware corporation.

W I T N E S S E T H :

WHEREAS, WCI is engaged through its wholly-owned subsidiaries, BLAW-KNOX CONSTRUCTION EQUIPMENT CORPORATION, a Delaware corporation

("BK"), WHITE CONSOLIDATED INTERNATIONAL HOLDINGS, LTD, a Delaware company ("WCI-LTD"), and BLAW-KNOX CONSTRUCTION EQUIPMENT CO. LIMITED, a United Kingdom agency company ("BK-LTD", and together with WCI-LTD., "BKL") in the businesses of designing, manufacturing, selling and licensing of the products described in Part 1.00 of the Disclosure Schedule to be delivered by WCI to BUYER prior to the CLOSING (the "SCHEDULE"), a draft of which SCHEDULE is attached hereto, and spare and replacement parts therefor (the "PRODUCTS"), all of which businesses are collectively referred to as the "BUSINESS".

WHEREAS, WCI desires to sell and BUYER desires to purchase all outstanding shares of capital stock of BK (the "SHARES") and certain rights, properties and assets of BKL pertaining to the BUSINESS, all upon the terms and conditions hereof.

WHEREAS, subject to the mutual agreement of WCI and BUYER, the parties may cause the BKL ACQUIRED ASSETS (defined below) to be transferred by a separate agreement, satisfactory to both parties, for a purchase price to be mutually agreed upon by BUYER and WCI, which amount shall accordingly be deducted from the FINAL CASH PRICE referred to in Section 2.1 and the PRELIMINARY CASH PRICE referred to in Sections 2.2, 7.2.8 and 8.3.3.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - SALE OF THE SHARES AND THE BKL ACQUIRED ASSETS

1.1 Sale and Purchase of the Shares and the BKL Acquired Assets. At the CLOSING (as defined in Section 8.1) WCI or BKL shall sell, transfer, assign and deliver (or cause to be so done) to BUYER, and BUYER shall purchase and acquire from WCI or BKL, the SHARES and the ACQUIRED ASSETS (as defined below) of BKL (the "BKL ACQUIRED ASSETS"). The rights, properties and assets used now or in the past in the conduct of the BUSINESS (the "ACQUIRED ASSETS") shall be owned as of the CLOSING by BK or BKL except to the extent that any thereof form a part of the EXCLUDED ASSETS which shall have been transferred at or prior to the CLOSING to WCI or an affiliate (as defined in Section 9.17) of WCI, which ACQUIRED ASSETS shall include, without limitation, the following:

1.1.1 The real properties described in Part 1.1.1 of the SCHEDULE and all interests of WCI and its affiliates in and related to the buildings, structures, fixtures and improvements thereon and all other appurtenances thereto (the "REAL PROPERTIES").

1.1.2 The real property leases listed in Part 1.1.2 of the SCHEDULE and all interests of WCI and its affiliates in and related to the fixtures and improvements on the properties covered by such leases and all

other appurtenances thereto (the "LEASEHOLDS").

1.1.3 All machinery, equipment, tools, dies, molds, jigs, patterns, gauges and production fixtures, material handling equipment, vehicles (other than leased motor vehicles), business machines, office furniture and office fixtures, and other tangible property, and all related spare and maintenance parts therefor (the "MACHINERY & EQUIPMENT") including, without limitation, those listed in the Fixed Asset Ledgers of BK and BKL included as Part 1.1.3 of the SCHEDULE.

1.1.4 All of the (a) finished goods inventories; (b) replacement and spare and component parts; and (c) raw materials, work in process inventory, operating supplies, packaging and shipping materials (the "INVENTORIES").

1.1.5 (a) The trademarks, service marks, trademark registrations, trade names, copyrights and applications for registration thereof listed in Part 1.1.5(a) of the SCHEDULE (the "TRADEMARKS, SERVICE MARKS, TRADE NAMES & COPYRIGHTS"), subject to outstanding licenses (all of which are listed in Part 1.1.5(b) of the SCHEDULE); and (b) the trademark, service mark, trade name and copyright licenses, whether WCI or any of its affiliates is licensor or licensee thereunder, specified in Part 1.1.5(b) of the SCHEDULE.

1.1.6 (a) The patents and applications for patents listed in Part 1.1.6(a) of the SCHEDULE (the "PATENTS"), subject to outstanding licenses (all of which are listed in Part 1.1.6(b) of the SCHEDULE); and (b) the patent licenses, whether WCI or any of its affiliates is licensor or licensee thereunder, listed in Part 1.1.6(b) of the SCHEDULE. The licenses listed in Parts 1.1.5(b) and 1.1.6(b) of the SCHEDULE are collectively referred to hereinafter as the "LICENSES".

1.1.7 All PRODUCT related drawings (including product and production), designs, specifications and production data.

1.1.8 All books and records of the BUSINESS (including, without limitation, customer lists) located at the REAL PROPERTIES and copies of any other books and records located at other facilities of WCI and its affiliates relating to the BUSINESS subject, however, to the provisions of Sections 5.2.1 and 5.2.5.

1.1.9 Any permits or approvals issued to WCI or its affiliates by any federal, state, foreign, local or other jurisdiction or instrumentality and relating to the BUSINESS, including, without limitation, those listed in Part 1.1.9 of the SCHEDULE (the "PERMITS").

1.1.10 (a) All contracts made or orders given which relate to the purchase of materials, parts, supplies and commodities used in the BUSINESS; (b) all sales orders for PRODUCTS; (c) all leases of machinery and equipment; (d) all dealer, distributor and sales representative agreements relating to the BUSINESS; and (e) all other licenses, agreements,

commitments and understandings (collectively the "CONTRACTS").

1.1.11 As of the CLOSING all trade acceptances and trade accounts and notes receivable (and security interests from third parties relating thereto) of the BUSINESS (the "RECEIVABLES").

1.1.12 Subject to the provisions of Article VI hereof, the rights and entitlements of BK under the Collective Bargaining Agreement included as Part 1.1.12(a) of the SCHEDULE (the "BK COLLECTIVE BARGAINING AGREEMENT") and the rights and entitlement of BKL under the Collective Bargaining Agreement included as Part 1.1.12(b) of the SCHEDULE (the "BKL COLLECTIVE BARGAINING AGREEMENT", and together with the BK COLLECTIVE BARGAINING AGREEMENT, the "COLLECTIVE BARGAINING AGREEMENTS").

1.1.13 All other rights, assets and properties relating to the BUSINESS.

1.1.14 All prepaid items and deferred charges relating to the BUSINESS.

1.1.15 All rights, assets and properties reflected on the CURRENT BALANCE SHEET (as defined in Section 4.1.2(b)) or acquired or manufactured after the date thereof, other than finished goods inventory and scrap materials sold or disposed of in the ordinary course of business after December 31, 1993 and prior to the CLOSING.

1.2 Excluded Assets. Anything hereinabove contained to the contrary notwithstanding, the following rights, properties and assets (the "EXCLUDED ASSETS") shall not be included in the ACQUIRED ASSETS:

1.2.1 As of the CLOSING, all cash, bank balances, monies in possession of any banks and similar cash equivalents, and marketable securities.

1.2.2 All self-insurance programs and all policies of insurance and any return of premiums associated with the cancellation of any such programs or policies.

1.2.3 Any master leases covering motor vehicles.

1.2.4 All intercompany accounts with WCI, its subsidiaries and divisions.

1.2.5 All finished goods inventory and scrap materials reflected on the CURRENT BALANCE SHEET or manufactured after the date thereof which has been sold or disposed of in the ordinary course of business after December 31, 1993 and prior to the CLOSING, and such other properties and assets as may be agreed to in writing by BUYER.

1.2.6 The names "White Consolidated Industries, Inc." or "White", the initials "WCI", the slogan "One of the White Consolidated Industries WCI" or any similar corporate trade name or trademark of WCI.

1.2.7 The capital stock of WCI-LTD and BK-LTD.

1.2.8 The sports field and surplus real estate, both located in the United Kingdom and identified on the survey attached as Part 1.2.8 of the SCHEDULE, and the prepaid insurance items referred to in the target net equity statement attached as Part 1.2.8 of the SCHEDULE.

1.2.9 Those assets and properties of WCI relating to WCI's supervisory headquarters functions located at 11770 Berea Road, Cleveland, Ohio, as follows:

(a) the real property constituting WCI's Cleveland (Lakewood), Ohio headquarters and the personal property and other property, tangible and intangible, including without limitation, computer software programs, located at WCI's Cleveland (Lakewood), Ohio headquarters;

(b) financial, banking and other lender, accounting, tax, internal audit, payroll and similar functions;

(c) human resources, collective bargaining, employee health, safety and health, risk management, grievance, equal employment and similar personnel and employee functions;

(d) pension and actuarial functions and health, life and other employee insurance and public and private liability insurance functions;

(e) legal functions, including without limitation, all intellectual property registration, filing, issuance, maintenance and renewal functions;

(f) government relations, public relations, advertising and engineering functions (including environmental, security and similar functions);

provided that the items specified in this Section 1.2.9 shall not include any of the books and records referred to in Section 1.1.8 above.

1.2.10 Those assets and properties of AB Electrolux relating to the Electrolux supervisory headquarters functions located at Luton, England, as follows:

(a) the real property constituting the Electrolux U.K. (Luton)

headquarters and the personal property and other property, tangible and intangible, including, without limitation, computer software programs, located at such headquarters; and

(b) financial, banking, leasing, accounting, tax, internal audit, insurance, legal, human resources and similar functions;

provided that the items specified in this Section 1.2.10 shall not include any of the books and records referred to in Section 1.1.8 above.

1.2.11 Any asset or property associated with any pension plan of WCI identified under this Agreement as not being expressly assumed by BK, BUYER or its designee hereunder.

1.2.12 All other assets and properties of WCI and its affiliates (other than BK and BKL) which are not now, and have not been, used in the BUSINESS.

1.3 Nonassignable Permits, Licenses and Contracts.

1.3.1 To the extent that any permit, approval, or the like or any contract, license or other agreement, which would constitute a BKL ACQUIRED ASSET but for the fact that it is not assignable or transferable without the consent or waiver of the issuer thereof or the other party thereto or any third party (including a government or governmental unit), or if such assignment or transfer or attempted assignment or transfer would constitute a breach thereof or a violation of any law, decree, order, regulation or other governmental edict, this Agreement shall not constitute an assignment or transfer, or an attempted assignment or transfer, of such permit, approval, contract, license or agreement.

1.3.2 WCI and BKL shall use their reasonable best efforts, and BUYER shall cooperate therewith, to obtain the consents and waivers referred to in Section 1.3.1. A complete list of all permits, approvals and the like and all contracts, licenses and other agreements requiring such consent or waiver (other than those involving aggregate payments of less than US$10,000 that are not otherwise material to the BUSINESS) is set forth in Part 1.3.1 of the SCHEDULE.

1.3.3 To the extent that any consent or waiver referred to in Section 1.3.1 is not obtained by WCI, WCI shall use its reasonable best efforts to (i) provide to BUYER the benefits (less any related costs incurred by WCI, including, without limitation, any applicable taxes) of any permit, approval or the like and of any contract, license or other agreement, all as referred to in Section 1.3.1, to the extent involving the BUSINESS, (ii) cooperate in any reasonable and lawful arrangement designed to provide such benefits to BUYER, without incurring any

financial obligation to BUYER other than to provide such benefits, and (iii) at the request of BUYER, enforce at the cost of and for the account of BUYER any right of WCI or its affiliates arising from any permit, approval, or the like and of any contract, license and other agreement described in Section 1.3.1 against such issuer or the other party or parties referred to in Section 1.3.1 (including the right to elect to terminate in accordance with the terms thereof on the advice of BUYER).

1.3.4 To the extent that BUYER is provided the benefits pursuant to this Section 1.3 of any permit, approval or the like or any contract, license or other agreement, BUYER shall perform for the benefit of the issuer thereof or the other party or parties thereto, the obligations of WCI or its affiliates thereunder or in connection therewith, but only to the extent that (i) such performance would not result in any default thereunder or in connection therewith and (ii) such obligations would have been ASSUMED LIABILITIES (as defined in Section 3.1), but for the nonassignability or nontransferability thereof.

ARTICLE II - CONSIDERATION

2.1 Sale Price. The aggregate consideration for the SHARES and the BKL ACQUIRED ASSETS shall be the payment of the FINAL CASH PRICE (as hereinafter defined) and the assumption of the ASSUMED LIABILITIES of BKL. The "FINAL CASH PRICE" shall be determined by adding the NET EQUITY ADJUSTMENT, if the NET EQUITY ADJUSTMENT is a positive number, to ONE HUNDRED THIRTY-FOUR MILLION U.S. Dollars (US$134,000,000), or subtracting the NET EQUITY ADJUSTMENT, if the NET EQUITY ADJUSTMENT is a negative

number, from ONE HUNDRED THIRTY-FOUR MILLION U.S. Dollars (US$134,000,000). The NET EQUITY ADJUSTMENT as of the CLOSING shall be determined in accordance with Section 2.4. The FINAL CASH PRICE shall be paid at the times and in the manner provided in Sections 2.2 and 2.5.

2.2 Payments of the Preliminary Cash Price. A payment of ONE HUNDRED THIRTY-FOUR MILLION U.S. Dollars (US$134,000,000) (the "PRELIMINARY CASH PRICE") on account of the FINAL CASH PRICE shall be paid at the CLOSING by BUYER to WCI by a certified or official bank check drawn on a bank satisfactory to WCI, or at WCI's election, by the transfer of federal funds.

The PRELIMINARY CASH PRICE shall be allocated to the SHARES and the BKL ACQUIRED ASSETS based on their respective fair market values to be mutually agreed upon by the parties acting reasonably and in good faith. Appropriate adjustments to be mutually agreed upon by the parties acting reasonably and in good faith will be made to the foregoing allocations to take into account the NET EQUITY ADJUSTMENT.

2.3 Audit of Book Value of ACQUIRED ASSETS and ASSUMED

LIABILITIES and Determination of NET EQUITY.

2.3.1 Immediately after the CLOSING, WCI shall cause Ernst & Young ("E&Y"), certified public accountants for WCI, to conduct an audit of the BUSINESS in respect of the ACQUIRED ASSETS (including good will) and the ASSUMED LIABILITIES to determine the book value as of the CLOSING of the ACQUIRED ASSETS less the book value of the ASSUMED LIABILITIES (the "NET EQUITY") of the BUSINESS (with a representative of BUYER'S certified public accountant Price Waterhouse ("PW") to be present to observe such audit), on the basis of which E&Y shall prepare and deliver, within sixty (60) days following the CLOSING, to both WCI and BUYER, an audited schedule setting forth the book value of such ACQUIRED ASSETS and ASSUMED LIABILITIES and NET EQUITY as of the CLOSING. Except as otherwise specifically provided for in this Agreement, the book value of the ACQUIRED ASSETS and the ASSUMED LIABILITIES of the BUSINESS shall be determined in accordance with generally accepted accounting principles except to the extent otherwise expressly set forth in the specific Accounting Methods and Procedures described in Part 2.3.1 of the SCHEDULE (the "ACCOUNTING METHODS AND PROCEDURES"). Such audited schedule shall be accompanied by a certificate of E&Y to the effect set forth in the preceding sentence, and to the further effect that such audited schedule has been prepared in accordance with the ACCOUNTING METHODS AND PROCEDURES and that such ACCOUNTING METHODS AND PROCEDURES comply with the immediately following sentence. The ACCOUNTING METHODS AND PROCEDURES are in accordance with generally accepted accounting principles, with the following possible exceptions:

(a) the allowance for doubtful accounts will be determined based on the formula set forth in the ACCOUNTING METHODS AND PROCEDURES;

(b) FIFO inventory valuations will include certain capitalized product development costs as set forth in the ACCOUNTING METHODS AND PROCEDURES;

(c) inventory reserves, including the LIFO reserve, will be determined based upon procedures set forth in the ACCOUNTING METHODS AND PROCEDURES;

(d) goodwill will be US$104,290,000;

(e) the NET EQUITY will not include any balance sheet accruals related to FAS No. 112 to the extent such accruals have not been recognized previously pursuant to BK's consistently applied year-end accounting methods; and

(f) the NET EQUITY will not include any balance sheet deferred taxes relating to the ACQUIRED ASSETS or the ASSUMED LIABILITIES.

2.3.2 In the event BUYER is in disagreement with the NET EQUITY determined pursuant to Section 2.3.1, each specific item of disagreement shall be set forth in writing and delivered to WCI within forty-five (45) days from the receipt of the audited schedule of the book values of the ACQUIRED ASSETS, the ASSUMED LIABILITIES and the NET EQUITY. If BUYER and WCI shall not, within the next thirty (30) days, resolve each such item of disagreement, both E&Y and BUYER's certified public accountant shall immediately refer the unresolved items of disagreement to a firm of independent public accountants of recognized standing which E&Y and BUYER's certified public accountant mutually select for resolution. Except as otherwise specifically provided for in this Agreement, resolution of the items in dispute shall be made in accordance with generally accepted accounting principles except to the extent otherwise expressly set forth in the specific ACCOUNTING METHODS AND PROCEDURES, and BUYER and WCI shall use their reasonable best efforts to assure that such resolution is made within sixty (60) days subsequent to such referral. Such resolution shall be conclusive and binding on the parties hereto.

2.3.3 The fees and disbursements of BUYER's certified public accountant shall be paid by BUYER, those of E&Y shall be paid by WCI and those of any firm to whom disagreements may be referred (in respect of any given disagreement) shall be paid by the party against whom such disagreement is resolved. BUYER and WCI shall cooperate fully, each at its own expense, in the conduct of the audit by E&Y and review by BUYER's certified public accountant and the firm of independent public accountants selected to resolve disputes, if any, and shall make available to such accountants all working papers, data and such other information as may be necessary or desirable in that connection.

2.4 NET EQUITY ADJUSTMENT. The NET EQUITY ADJUSTMENT shall be the NET EQUITY as of CLOSING determined in accordance with Section 2.3 minus ONE HUNDRED FORTY-TWO MILLION TWO HUNDRED THOUSAND U.S. Dollars (US$142,200,000) (the "OPENING NET EQUITY"), which OPENING NET EQUITY does not include any liabilities that constitute EXCLUDED LIABILITIES (as defined in Section 3.2), it being understood that if the OPENING NET EQUITY does include a liability that constitutes an EXCLUDED LIABILITY, then the OPENING NET EQUITY shall be adjusted upward to delete therefrom the EXCLUDED LIABILITIES.

2.5 Settlement and Payment of the FINAL CASH PRICE. Within ten (10) days after the final determination of the NET EQUITY as of the CLOSING (or such other date as shall be mutually agreed to in writing by the parties) (the "SETTLEMENT DATE"), the NET EQUITY ADJUSTMENT as defined in Section 2.4 shall be made to the PRELIMINARY CASH PRICE in satisfaction or reconciliation of the FINAL CASH PRICE. In the event that the NET EQUITY ADJUSTMENT is a positive number, BUYER shall pay to WCI an amount equal to the NET EQUITY ADJUSTMENT on the SETTLEMENT DATE by means of a bank or

cashier's check or wire transfer of federal funds. To the extent that the NET EQUITY ADJUSTMENT is a negative number, WCI shall pay to BUYER an amount equal to the NET EQUITY ADJUSTMENT on the SETTLEMENT DATE by means of a bank or cashier's check or wire transfer of federal funds.

2.6 Effect of Certain Taxes. Notwithstanding any other provision of this Agreement, the ASSUMED LIABILITIES for purposes of this Article II (including but not limited to the determination of the NET EQUITY, the NET EQUITY ADJUSTMENT, and the FINAL CASH PRICE) shall not include any liability for taxes, interest or penalties resulting from any election filed by BK or BUYER under Section 338 of the Internal Revenue Code of 1986, as amended (the "Code"), which liability, if any, shall nevertheless be the sole obligation of BK.

ARTICLE III - ASSUMED LIABILITIES; INDEMNIFICATION

3.1 Assumed Liabilities.

Subject to Section 3.2 below, upon the CLOSING, and effective as of the CLOSING, (a) BK shall be responsible for the ASSUMED LIABILITIES of BK and (b) BUYER shall cause the entity designated by it pursuant to Section 9.4 below to assume the ASSUMED LIABILITIES of BKL (the "BKL ASSUMED LIABILITIES"). The "ASSUMED LIABILITIES" shall mean:

3.1.1 All liabilities and obligations, contingent, absolute, known or unknown, of BK and BKL arising out of the conduct of the BUSINESS, whether in existence as of the CLOSING or (in the case of BK) arising thereafter, including but not limited to (i) all liabilities arising out of the conduct of the BUSINESS of the type set forth on the CURRENT BALANCE SHEET brought forward to the CLOSING; (ii) subject to Section 1.3, the liabilities and obligations which accrue subsequent to the CLOSING and/or remain to be performed under the CONTRACTS, the WARRANTY OBLIGATIONS (as defined in Section 5.2.2), the LEASEHOLDS, the LICENSES, and the COLLECTIVE BARGAINING AGREEMENTS; (iii) all liabilities and obligations arising out of the conduct of the BUSINESS to be assumed by BUYER elsewhere in this Agreement, including without limitation, those described in Article VI, (iv) all other liabilities and obligations arising out of the conduct of the BUSINESS arising after the CLOSING whether they arise out of the conduct of the BUSINESS prior to or after the CLOSING and (v) the amount of payroll, real estate and other non-income TAXES assessed against BK and BKL, in the case of each such TAX, to the extent set forth on Part 3.2(f) of the SCHEDULE, provided, however, that the amount of each such TAX that exceeds the amount set forth on Part 3.2(f) of the SCHEDULE with respect to such TAX shall constitute EXCLUDED LIABILITIES (as defined below) and shall not constitute ASSUMED LIABILITIES.

3.1.2 Liabilities for post-retirement benefits under the BK COLLECTIVE BARGAINING AGREEMENT.

3.2 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, there shall not be included in the ASSUMED LIABILITIES any of the following liabilities, whether contingent, absolute, known or unknown (each an "EXCLUDED LIABILITY" and collectively, the "EXCLUDED LIABILITIES"), and the EXCLUDED LIABILITIES applicable to BK (the "BK EXCLUDED LIABILITIES") shall be assumed by WCI at or prior to the CLOSING:

(a) Liabilities and obligations (i) arising out of Workers' Compensation claims relating to employment by BK or BKL as of or prior to the CLOSING, including but not limited to those claims listed on Part 3.2(a) of the SCHEDULE or (ii) in respect of any employees of WCI or its affiliates who are not EMPLOYEES (as defined in Section 6.1.1) or (iii) from or in respect of any EMPLOYEES employed by BUYER, BK or their affiliates as of CLOSING caused by any act or failure to act by WCI or its affiliates prior to CLOSING.

(b) Liabilities, obligations and claims (contingent or absolute) relating to or arising out of Product Liability Matters (as defined below), whether in existence as of the CLOSING or arising thereafter, resulting in death, injury, disease, property damage (including, but not limited to, the loss of use thereof and consequential damages therefrom) or economic loss or damage (whether compensatory or punitive) in respect of any PRODUCTS or any other product, accessory, attachment, component, part or service manufactured or assembled (in whole or in part), sold, rented, performed or delivered by WCI, BK, BK-LTD or WCI-LTD or any affiliate thereof (or any predecessor company) prior to the CLOSING, including, but not limited to, those claims listed on Part 3.2(b) of the SCHEDULE; except that this Section 3.2(b) shall not include (i) any such liabilities, obligations or damages that are judicially determined (after expiration of any appeals) to have resulted solely from defects caused by major rebuilding of a PRODUCT performed directly by BK or BUYER or any affiliate of BK or BUYER after the CLOSING, or (ii) the obligations of BK under Section 5.2.2 below to repair or replace any defective parts in accordance with the terms, conditions and limitations of any standard express written warranty or the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE. "Product Liability Matters" mean any negligence or other tort or strict or other product liability matters, other tortious acts or failures to act, breach of warranty, whether express (other than BK's obligations under the express written warranties described in Section 5.2.2 and the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE) or implied, or any other injury, disease or damage (whether compensatory or punitive) caused by or attributable to the PRODUCTS or any other product, accessory, attachment, component, part or service (whether actual or alleged and whether relating to legal theories, common law, statues, regulations, jurisprudence, or other

principles, now existing or hereafter created, applied, adopted or otherwise recognized).

(c) All liabilities for benefits and benefit claims with respect to employees and their spouses, dependents, survivors and beneficiaries arising under the employee welfare benefit plans (as defined in Section 3 (1) of ERISA) of WCI, regardless of when such liabilities or claims are asserted, if they are incurred prior to the CLOSING.

(d) Any pension liabilities with respect to employees of BK, WCI or its affiliates, other than employees included in the BLAW-KNOX PLAN or BKL's UNITED KINGDOM PLAN.

(e) Liabilities for post-retirement benefits other than those under the BK COLLECTIVE BARGAINING AGREEMENT referred to in Section 3.1.2.

(f) TAXES assessed against or payable by WCI, BK or BKL or otherwise assessed against or payable by the BUSINESS with respect to taxable periods or portions thereof ending on or prior to the CLOSING, including all liabilities for TAXES resulting from the transactions contemplated by this Agreement, except to the extent set forth in Section 9.6, provided that any liability for TAXES resulting from any election filed by BK or BUYER under Code Section 338 shall not be an EXCLUDED LIABILITY, shall be the sole obligation of BK, and shall not be regarded as having been assumed by WCI at any time. "TAXES" shall mean any tax, fee, assessment or charge of any kind whatsoever imposed by any governmental authority, together with any interest or penalty imposed with respect thereto, and any liability for such amounts as a result either of being a member of an affiliated, combined, consolidated or unitary group (as such terms are defined for Federal, state, local or foreign tax purposes, as the case may be) or of a contractual obligation to indemnify any other entity, provided, however, that TAXES shall not include the amount of payroll, real estate and other non-income TAXES assessed against BK and BKL, in the case of each such TAX, to the extent set forth on Part 3.2(f) of the SCHEDULE.

(g) Any liability corresponding to an EXCLUDED ASSET.

(h) Liabilities, obligations, claims, damages, clean up or other remedial actions relating to (i) environmental matters relating to or arising out of any state of facts or condition existing, or acts or omissions occurring, prior to the CLOSING at or in connection with properties included in the ACQUIRED ASSETS, any LEASEHOLDS or any other properties previously owned, leased or operated by WCI or any of its affiliates or any predecessor company and (ii) the generation, transportation, storage, handling or disposal of

hazardous materials (whether on-site or off-site) relating to or arising out of any state of facts or condition existing, or acts or omissions of WCI or any of its affiliates (or any predecessor company) occurring, prior to the CLOSING.

(i) Indebtedness of BK or BKL for borrowed money, including, without limitation, all intercompany indebtedness.

(j) Liabilities in connection with revenue bonds issued to finance BK's present U.S. facilities (the "Revenue Bonds").

(k) Liabilities and obligations arising under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), relating to any current or former employee pension benefit plan, as defined in Section 3(2) of ERISA, of WCI or any subsidiary or affiliate, or any current or former trade or business (whether or not incorporated) of WCI which is, or was at any time, by reason of common control or otherwise, required to be aggregated with WCI or any subsidiary or affiliate of WCI, pursuant to Section 4001(b) of ERISA and/or Section 414(b), (c), (m) or (o) of the Code and the regulations promulgated thereunder, including, without limitation, all liabilities and obligations arising out of or in connection with the litigation described in Part 3.2(k) of the SCHEDULE or any of the facts or circumstances alleged in such litigation.

(l) Liabilities and obligations in connection with any guarantees, recourse agreements or repurchase agreements between BK or BKL, on the one hand, and WCI, AB Electrolux or any of their affiliates, on the other hand.

(m) Liabilities and obligations with respect to WCI's tax-qualified 401(k) plan.

(n) Liabilities and obligations arising out of or relating to the alleged patent infringement claim (the "PATENT CLAIM") set forth in that certain letter dated March 9, 1993 from Richard W. Bethea, Jr., of Stophel & Stophel, to David A. Tamburro, of Nies, Kurz, Bergert & Tamburro (the "Bethea Letter").

(o) All other liabilities and obligations not arising out of the conduct of the BUSINESS.

(p) Any extended or expanded warranty obligations other than the standard express warranty attached as Part 5.2.2 of the SCHEDULE and the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE.

(q) Liabilities and obligations pertaining to personal or real property leases previously relating to the BUSINESS, which are no longer a part of the BUSINESS, whether due to assignment by BK, BKL,

or any of their affiliates, or otherwise.

Without duplication of any amount provided for under Section 3.3.5, if BK obtains a tax deduction for federal or state income taxes for liabilities paid by WCI specified in Section 3.2, BUYER will reimburse WCI for the amount of such tax benefit actually realized by BK in the year in which the liability to which such tax benefit relates is paid by WCI. Any such tax benefit, to the extent permitted by applicable law, shall be treated as an adjustment of the purchase price.

3.3 Indemnification.

3.3.1 Except as otherwise agreed in Section 3.3.3 below, WCI shall indemnify and save BUYER, BK, and their affiliates harmless from and against any and all expenses (including attorney's fees), damages (whether compensatory or punitive), claims, liabilities or obligations whatsoever resulting from (i) any EXCLUDED LIABILITY, (ii) any breach of any covenant of WCI included herein, or (iii) any misrepresentations or breach of warranty of WCI as of the date of this Agreement or as of the CLOSING with respect to those representations and warranties of WCI contained in this Agreement or in the SCHEDULE, subject to Section 9.12.1, provided BUYER shall give prompt, but no more than thirty (30) days after institution, notice to WCI of the institution of any action, suit, proceeding or demand at any time instituted against or made upon BUYER in connection with which BUYER could claim indemnification hereunder; provided further that the failure of BUYER to provide such notice shall not affect the obligations of WCI hereunder, unless such failure actually materially prejudices WCI's right to contest such action, suit, proceeding or demand. BUYER shall, at the same time of giving such notice, give WCI full authority to defend, adjust, compromise or settle the action, suit, proceeding or demand of which such notice shall have been given, in the name of BUYER or otherwise, as WCI shall elect, provided that neither WCI nor any of its affiliates shall, without the prior written consent of the BUYER, settle or otherwise compromise any such action, suit, proceeding or demand in any manner that, in the reasonable judgment of the BUYER, would adversely affect BUYER; provided further, however, that WCI shall not be liable to BUYER under clause (iii) of this Section 3.3.1 until the aforementioned expenses, damages, claims, liabilities and obligations under such clause (iii) shall

have exceeded in the aggregate Five Hundred Thousand U.S. Dollars (US$500,000), and no claim for an alleged misrepresentation or breach of warranty under such clause (iii) shall be made after the third anniversary of the CLOSING DATE (as defined in Section 8.1). WCI shall keep BUYER fully and timely informed with respect to the commencement, status and nature of any such action, suit, proceeding or demand. WCI shall, in good faith, allow BUYER to make comments to WCI regarding the conduct of or positions taken in any such action, suit, proceeding or demand. Without limiting the generality of the foregoing, the indemnification provision of

this Section 3.3.1 shall include, with respect to the EXCLUDED LIABILITIES described in Section 3.2(b), any and all expenses (including attorneys fees), damages, claims, liabilities and obligations whatsoever for or resulting from any injury or disease to persons (including death) or damage to property (including the loss of use thereof and consequential damages therefrom) or for economic loss, irrespective of whether such expenses, damages, claims, liabilities and obligations are caused, or alleged to be caused, by a breach of warranty, whether express (other than BK's obligation under the express written warranties described in Section 5.2.2 and the express extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE) or implied, or the negligence or other tort or strict or other product liability or other tortious acts or failures to act by BK, BKL, BUYER or any of their affiliates or otherwise caused by or attributable to the PRODUCTS or any other products, accessory, attachment, component, part or service.

3.3.2 Except as otherwise agreed in Section 3.3.3 below, BUYER shall indemnify and save WCI and its affiliates harmless from and against any and all expenses (including attorney's fees), damages (whether compensatory or punitive), claims, liabilities or obligations whatsoever (i) resulting from any misrepresentations or breach of warranty of BUYER set forth herein, subject to Section 9.12.1, (ii) resulting from the ASSUMED LIABILITIES, or (iii) arising out of breach of any covenant of BUYER herein; provided, WCI shall give prompt, but no more than thirty (30) days after institution, notice to BUYER of the institution of any action, suit, proceeding or demand at any time instituted against or made upon WCI in connection with which WCI could claim indemnification hereunder, provided further that the failure of WCI to provide such notice shall not affect the obligations of BUYER hereunder, unless such failure actually materially prejudices BUYER's right to contest such action, suit, proceeding or demand. WCI shall, at the same time of giving such notice, give BUYER full authority to defend, adjust, compromise or settle the action, suit, proceeding or demand of which such notice shall have been given, in the name of WCI or otherwise, as BUYER shall elect, provided that neither BUYER nor any of its affiliates shall, without the prior written consent of WCI, settle or otherwise compromise any such action, suit, proceeding or demand in any manner that, in the reasonable judgment of WCI, would adversely affect WCI, provided further, however, that BUYER shall not be liable to WCI under clause (i) of this Section 3.3.2 until the aforementioned expenses, damages, claims, liabilities and obligations under such clause (i) shall have exceeded in the aggregate Five Hundred Thousand U.S. Dollars (US$500,000), and no claim for alleged misrepresentation or breach of warranty under such clause (i) shall be made after the third anniversary of the CLOSING DATE. BUYER shall keep WCI fully and timely informed with respect to the commencement, status and nature of any such action, suit, proceeding or demand. BUYER shall, in good faith, allow WCI to make comments to BUYER regarding the conduct of or positions taken in any such action, suit, proceeding or demand. Without limiting the generality of the forgoing, the indemnification provision of this Section

3.3.2 shall include, with respect to Product Liability Matters to the extent (and only to the extent) included within the ASSUMED LIABILITIES pursuant to Section 3.1.1 above, any and all expenses (including attorneys' fees), damages, claims, liabilities and obligations whatsoever for or resulting from any injury or disease to persons (including death) or damage to property (including the loss of use thereof and consequential damages therefrom) or for economic loss, irrespective of whether such expenses, damages, claims, liabilities and obligations are caused, or alleged to be caused, by a breach of warranty, whether express or implied, or the negligence or other tort or strict or other product liability or other tortious acts or failures to act by WCI or any of its affiliates or otherwise caused by or attributable to PRODUCTS or any other products, accessory, attachment, component, part or service.

3.3.3 Each of WCI and BUYER shall share equally any liabilities or obligations arising out of or related to (a) the failure to inform or consult with employees, trade unions or similar organizations with respect to the transactions contemplated by this Agreement pursuant to the U.K. Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE") and (b) any "unfair dismissals" of employees as contemplated under TUPE, in each case regardless of whether any claim relating to (a) or (b) above ("Shared Claims") are asserted against WCI or BUYER or any of their respective affiliates. WCI and BUYER shall cooperate with each other in jointly defending any Shared Claims. If counsel is mutually selected to represent both WCI and BUYER, then WCI and BUYER shall share equally the fees and disbursements of such counsel; if counsel is selected by WCI or BUYER to represent only WCI or BUYER, respectively, then the fees and disbursements of such counsel shall be paid by the party retaining such counsel.

3.3.4 In addition to WCI's other obligations set forth in this Section 3.3, WCI shall indemnify and save BUYER, BK and their affiliates harmless from and against any and all expenses (including attorney's fees), damages (whether compensatory or otherwise), claims, liabilities or obligations relating to or arising out of the Purchasers' (as defined in the Blaw-Knox Trademark Agreement referred to below) use of the Term (as defined in the Blaw-Knox Trademark Agreement) in the manner specified in Section 5(ii) of the Blaw-Knox Trademark Agreement, dated as of April 20, 1994, by and among WCI, BK, Blaw-Knox Corporation, Scottdale Manufacturing Corporation, Wheeling Machine & Foundry Company, Buffalo Technologies Corporation, R.O.B. Realty Corporation, and Park Corporation. BUYER will give WCI reasonably prompt notice of any claim asserted against such Purchasers alleging facts or circumstances that would give rise to an indemnity by WCI under this Section 3.3.4.

3.3.5 Any claims hereunder for indemnification by either party shall be reduced to the extent of any tax benefits resulting from such indemnified matter which are actually realized by the claiming party in

the year in which the indemnity payment is made.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of WCI. "To the best of WCI's knowledge" shall mean the knowledge of WCI management and legal counsel located at the Cleveland corporate headquarters and shall also include the knowledge of the following persons: Bruno Getz, Mike Miller, Garry Bowhall, Edgar Halton, Ron Chaston, Anthony Wardle and Gary Albin. WCI hereby represents and warrants to BUYER as follows:

4.1.1 Corporate Data and Authority of WCI.

(a) WCI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) BK is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is also duly qualified and in good standing to do business as a foreign corporation in the State of Illinois. The authorized capital stock of BK consists of 100 shares of Common Stock, par value $1.00 per share, all of which shares are outstanding. All of the Shares have been validly issued and are fully paid and nonassessable and are owned by WCI free and clear of all liens, claims and encumbrances. BK has no securities reserved for issuance. Except for the SHARES there are no shares of capital stock of BK authorized, issued or outstanding and there are no outstanding subscriptions, options, warrants, rights, convertible securities or other agreements or commitments of any character providing for the purchase, issuance or sale of any shares of capital stock of BK. The delivery to BUYER of the SHARES pursuant to the provisions of this Agreement will transfer to BUYER good and marketable title thereto, free and clear of all liens, encumbrances, restrictions and claims of every kind. None of BK, WCI-LTD or BK-LTD owns, either directly or indirectly, any equity security or other capital stock of or ownership or proprietary interest in any corporation, partnership, association, trust, joint venture or any other entity, except that WCI-LTD owns all of the outstanding shares of capital stock of BK-LTD.

(c) WCI-LTD is a corporation duly organized, validly existing and in good standing to do business under the laws of the State of Delaware. BK-LTD is a limited liability company duly incorporated and subsisting under the laws of England and is not in liquidation. BK-LTD is a wholly-owned subsidiary of WCI-LTD.

(d) WCI and its affiliates have full power and authority to sell and transfer or to cause to be sold and transferred to BUYER the SHARES and the BKL ACQUIRED ASSETS and to perform all other undertakings hereunder, and the execution, delivery and performance of this Agreement

and all related documents delivered by WCI and its affiliates at the CLOSING are and will be within the authority of the officers of WCI or its affiliates who execute them. This Agreement constitutes and, upon execution and delivery thereof, the other agreements and instruments to be delivered by WCI and its affiliates pursuant to this Agreement will constitute, valid and binding agreements of WCI or such affiliate, respectively, subject to bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights or the availability of the remedy of specific performance.

(e) The consummation of the transactions by WCI and its affiliates contemplated hereby will not conflict with the Articles of Incorporation or By-laws of WCI, BK or WCI-LTD nor the constitutive documents of BK-LTD and will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which WCI, BK, WCI-LTD or BK-LTD is a party or by which WCI, BK, WCI-LTD or BK-LTD or any of their properties are bound.

4.1.2 Financial Data.

(a) The consolidated and individual unaudited balance sheets and related consolidated and individual statements of income and cash flow of BK and BKL as of and for the years ended December 31, 1993, December 31, 1992 and December 31, 1991, together with the notes thereto (collectively, the "FINANCIAL STATEMENTS"), copies of which are included in Part 4.1.2 of the SCHEDULE, fairly present the financial position of the BUSINESS on a divisional basis as of such respective dates and the results of operations and cash flow of the BUSINESS on a divisional basis for the respective years then ended, in conformity with WCI's accounting principles for its operating subsidiaries and divisions applied on a consistent basis. Such accounting principles are in accordance with generally accepted accounting principles, except as expressly set forth in the notes to the FINANCIAL STATEMENTS and in the ACCOUNTING METHODS AND PROCEDURES.

(b) The unaudited consolidated balance sheet of BK and BKL as of December 31, 1993, and the related consolidated unaudited statements of income and cash flow for the period ending on such date, together with the notes thereto, are sometimes herein collectively referred to as the "CURRENT BALANCE SHEET".

4.1.3 Properties and Operations of the BUSINESS.

(a) Except as disclosed in Part 4.1.3(a) of the SCHEDULE or in

the letter dated April 20, 1994 from Daniel R. Elliott of WCI to Bernard D. Henely of BUYER (the "WCI LETTER"), since December 31, 1993 there has not been any change which has had a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the BUSINESS ("MATERIAL ADVERSE EFFECT").

(b) BK has good and marketable title to all of the ACQUIRED ASSETS of BK, and WCI-LTD has good and marketable title to all of the BKL ACQUIRED ASSETS (which, together with the ACQUIRED ASSETS of BK, constitute all of the ACQUIRED ASSETS), in each case free and clear of all liens and encumbrances, except for: (i) liens disclosed in Part 4.1.3(b) of the SCHEDULE; (ii) liens for taxes not yet due and payable or being contested in good faith by appropriate proceedings, and for which adequate reserves have been established; and (iii) imperfections of title, easements, pledges, charges and encumbrances, if any, incurred in the ordinary course of business that do not materially detract from the value or marketability or interfere with the present use of the ACQUIRED ASSETS or otherwise materially impair the operation of the BUSINESS and which do not secure obligations for borrowed money or the deferred portion of the purchase price of acquired assets ("PERMITTED LIENS").

(c) BK-LTD owns no assets or property.

4.1.4 Litigation and Other Matters.

(a) No action, suit, or proceeding is pending or, to the best of WCI's knowledge after due inquiry, threatened against WCI, BK, WCI-LTD or BK-LTD which could materially and adversely affect the transactions contemplated by this Agreement. None of BK, WCI-LTD or BK-LTD is in default with respect to any order, injunction or decree directed to BK, WCI-LTD or BK-LTD by any court or governmental department or agency which directly affects the operations of the BUSINESS or the use of the ACQUIRED

ASSETS. Except as described in Part 4.1.4(a) of the SCHEDULE, since January 1, 1994 (i) no actions, suits, proceedings, grievances or unfair labor practices have been filed against BK, WCI-LTD or BK-LTD or any of the properties or assets or intangible assets of BK, WCI-LTD or BK-LTD which relate directly to the BUSINESS or the ACQUIRED ASSETS or the transactions contemplated by this Agreement and (ii) none of BK, WCI-LTD or BK-LTD has been subject to any order of any court or any governmental agency which relates to or could adversely affect the BUSINESS and (iii) no actions, suits, proceedings, grievances or unfair labor practices have been filed against WCI or any of its affiliates which, if adversely determined, could impose a liability on BK or the BUSINESS or could subject the assets or properties of BK or the BUSINESS to any lien, encumbrance or enforcement action. Part 4.1.4(a) of the SCHEDULE also describes all such actions, suits, proceedings, grievances and unfair

labor practices and the related expenses, including indemnification and legal fees, and reserves, incurred since January 1, 1989 and any unresolved claims filed prior thereto, none of which individually or in the aggregate could reasonably be expected to have a MATERIAL ADVERSE EFFECT.

(b) Labor Matters. Each of BK and BK-LTD is currently a party to its respective COLLECTIVE BARGAINING AGREEMENT. Except as disclosed on Part 4.1.4(b) of the SCHEDULE or in the WCI LETTER (as defined in Section 4.1.3(a)), since January 1, 1994 there has not been, nor was there or is there, to best of WCI's knowledge after due inquiry, threatened or contemplated, any strike, slowdown, picketing or work stoppage by any employees against the BUSINESS, its assets or properties wherever located, any secondary boycott with respect to the PRODUCTS, any lockout by WCI, BK, WCI-LTD or BK-LTD of any of their employees or any labor trouble or other occurrence, event or condition of a similar character affecting, or which may affect, the business, operation, assets or properties of the BUSINESS.

(c) Labor Disputes. Since January 1, 1994, no significant unsettled labor dispute has affected the BUSINESS which would have a MATERIAL ADVERSE EFFECT.

4.1.5 Warranties. Part 4.1.5 of the SCHEDULE sets forth (i) copies of all current, express written PRODUCT warranties and written warranty policies of BK, WCI-LTD and BK-LTD in respect of the BUSINESS, including, without limitation, all specific guarantees with respect to performance of any PRODUCT, (ii) to the best of WCI's knowledge after due inquiry, each of such PRODUCT warranty or policy which is subject to any dispute between BK, WCI-LTD and BK-LTD and any third person and (iii) the PRODUCT warranty and policy experience of the BUSINESS for 1993.

4.1.6 Certain Governmental Matters.

(a) Taxes. All of BK's, WCI-LTD's and BK-LTD's Tax returns and reports ("RETURNS") required by law to be filed have been duly filed. Such RETURNS as filed are accurate in all material respects. All TAXES and other governmental charges with respect to the BUSINESS which are due and payable have been paid except for such, if any, as are being contested in good faith by appropriate proceedings which are identified and described in Part 4.1.6(a) of the SCHEDULE and adequately disclosed and fully provided for on the CURRENT BALANCE SHEET and in the books and records of BK and BKL. No assessments for additional TAXES have been made or proposed which have not been provided for in the CURRENT BALANCE SHEET. With respect to each of BK, WCI-LTD and BK-LTD (or any predecessor company), to the best of WCI's knowledge after due inquiry, no claim has ever been made by any

taxing authority in a jurisdiction where such company does not file RETURNS that such company is or may be subject to taxation relating to the

BUSINESS by that jurisdiction.

(b) Compliance. Except as identified and described in Part 4.1.6(b) of the SCHEDULE, since July 1, 1993 the operations of the BUSINESS have been conducted in all material respects in accordance with and meet the applicable laws and regulations of all United States and United Kingdom governmental authorities and, to the best of WCI's knowledge after due inquiry, all other governmental authorities, and all subdivisions thereof having jurisdiction over it or the PRODUCTS and of all states, municipalities and other political subdivisions and agencies thereof, including laws, rules, regulations, orders and ordinances relating to (i) the environment and the generation of hazardous waste, (ii) employee safety and (iii) discrimination against employees.

Either BK, WCI-LTD or BK-LTD has in full force and effect all material governmental licenses and permits required for the operation of the BUSINESS and no violations exist or have been recorded in respect of any such existing licenses or permits and remain uncorrected as of the CLOSING and no proceeding is pending or to the best knowledge of WCI threatened which seeks the revocation or limitation of any such existing licenses or permits.

4.1.7 Properties.

(a) Sufficiency. Except as disclosed in Part 4.1.7(a) of the SCHEDULE, since July 1, 1993 none of BK, WCI-LTD or BK-LTD has disposed of any real or personal property, tangible or intangible, associated with the BUSINESS other than in the ordinary course. The ACQUIRED ASSETS constitute all the assets and tangible and intangible properties necessary to conduct the BUSINESS as presently conducted.

(b) Personal Properties. Except as identified and described in Part 4.1.7(b) of the SCHEDULE, either BK or WCI-LTD has good and marketable title to the personal properties used in the BUSINESS and all of such properties which are capitalized are reflected in Part 4.1.7(b) of the SCHEDULE, as at the date of the CURRENT BALANCE SHEET.

4.1.8 Agreements and Commitments.

(a) Material Contracts. Part 4.1.8(a) of the SCHEDULE lists all material CONTRACTS to which BK, WCI-LTD or BK-LTD is a party, including, without limitation:

(i) any agreement or commitment relating to the employment of any person by BK, WCI-LTD or BK-LTD (other than those that are terminable at will without penalty),

(ii) any agreement, indenture or other instrument which contains restrictions with respect to payments of dividends or other distributions in respect of its capital stock,

(iii) any agreement or commitment relating to capital expenditures in excess of Ten Thousand U.S. Dollars (US$10,000),

(iv) any loan or advance to, or investment in, any person or entity or any agreement or commitment relating to the making of any such loan, advance or investment (other than loans or commitments made in the ordinary course of business pursuant to dealer inventory financing programs), in excess of Ten Thousand U.S. Dollars (US$10,000),

(v) any agreement or commitment for borrowed money by BK, WCI-LTD or BK-LTD,

(vi) any guarantee or other contingent liability in respect of any indebtedness or obligation of any person or entity (other than the endorsement of negotiable instruments for collection in the ordinary course of business) involving aggregate payments in excess of Ten Thousand U.S. Dollars (US$10,000),

(vii) any management service, consulting or other similar type of agreement (other than those that are terminable upon 30 days notice without penalty) involving payments in excess of Ten Thousand U.S. Dollars (US$10,000),

(viii) any agreement or commitment limiting the ability of BK, WCI-LTD or BK-LTD to engage in any line of business or to compete with any person or entity that will be binding on BK, WCI-LTD or BK-LTD after the CLOSING,

(ix) any real or personal property lease involving annual rentals of Ten Thousand Dollars (US$10,000) or more, and any licenses involving intellectual property (other than computer software licenses generally available to the public), and

(x) any agreement or commitment not entered into in the ordinary course of business involving aggregate payments of Ten Thousand Dollars U.S. (US$10,000) or more (other than those that are terminable upon 30 days notice without penalty).

No default or event of default currently exists under any of the foregoing CONTRACTS.

(b) Compensation. Except as disclosed in Part 4.1.8(b) of the SCHEDULE and the WCI LETTER (as defined in Section 4.1.3(a)), since July 1, 1993 none of BK, WCI-LTD or BK-LTD has paid or become committed to

pay to or for the benefit of any employees or sales representatives compensation other than wages, salaries or sales commissions at rates then in effect, nor have they made or been committed to make any payments pursuant to any unusual compensatory arrangement.

(c) Employees. Part 4.1.8(c) of the SCHEDULE contains all: (i) life insurance plans, group health and group welfare plans, retiree life and retiree medical plans and other fringe benefit plans or commitments (whether or not reduced to writing) which apply to personnel of the BUSINESS (and which are not classified herein as PENSION PLANS or OTHER EMPLOYEE PLANS) (collectively the "BENEFIT PLANS"), (ii) pension, retirement, profit sharing, 401K and savings plans which apply in any way to the personnel of the BUSINESS (collectively the "PENSION PLANS") and (iii) employment, consulting, union, incentive compensation, deferred compensation, stock option, employee stock purchase, and bonus plans and agreements and other employee perquisites and policies which apply to the personnel of the BUSINESS (collectively the "OTHER EMPLOYEE PLANS").

(d) Employee Benefit Plans. Each BENEFIT PLAN and PENSION PLAN that constitutes an employee benefit plan within the meaning of Section 3(3) of ERISA, maintained by BK or to which BK contributes or is a party (each, a "PLAN" and collectively, the "PLANS") is in substantial compliance with applicable law and has been administered and operated in all material respects in accordance with its terms. Each PLAN which is intended to be "qualified" within the meaning of Section 401(a) of the Internal Revenue Code of 1986, as amended (the "CODE"), has received a favorable determination letter from the Internal Revenue Service and no event has occurred and no condition exists which could reasonably be expected to result in the revocation of any such determination. No event which constitutes a "Reportable Event" (as defined in Section 4043(b) of ERISA) for which the 30-day notice requirement has not been waived by the Pension Benefit Guaranty Corporation ("PBGC") has occurred with respect to any PLAN. No PLAN subject to Title IV of ERISA has been terminated or is or has been the subject of termination proceedings pursuant to Title IV of ERISA. Full payment has been made of all amounts which WCI or any of its subsidiaries were required under the terms of any PLAN to have paid as contributions to such PLAN on or prior to the date hereof (excluding any amounts not yet due) and no PLAN which is subject to Part 3 of Subtitle B of Title I of ERISA has incurred any "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the CODE), whether or not waived. Neither WCI nor any of its subsidiaries nor any other "disqualified person" or "party in interest" (as defined in Section 4975(e)(2) of the CODE and Section 3(14) of ERISA, respectively) has engaged in any transaction in connection with any PLAN that could reasonably be expected to result in the imposition of a material penalty pursuant to Section 502(i) of ERISA, damages pursuant to Section 409 of ERISA or a tax pursuant to Section 4975(a) of the CODE. No material liability, claim, action or litigation has been made, commenced or

threatened with respect to any PLAN (other than for benefits payable in the ordinary course and for the payment of PBGC insurance premiums). No PLAN is a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA). BK does not have any material unfunded liabilities for benefits accrued pursuant to any PLAN, which PLAN is not intended to be qualified under Section 401(a) of the CODE. Neither BK nor any trade or business (whether or not incorporated) which is required to be aggregated therewith pursuant to Section 4001(b) of ERISA and/or Section 414(b), (c), (m) or (o) of the CODE and the regulations promulgated thereunder has or could incur or be subject to (i) any material liability under Title IV of ERISA (other than for the payment of PBGC insurance premiums in the ordinary course), (ii) a security interest pursuant to Section 412(f) of the CODE or (iii) a lien pursuant to Section 412(n) of the CODE or Section 4068 or 302(f) of ERISA.

(e) U.K. Plan. The only active members of BKL's UNITED KINGDOM PLAN (the "UK PLAN") are employees exclusively engaged in the BUSINESS and BKL is the only participating employer. There is no obligation or ex gratia or voluntary arrangement to provide any relevant benefits (as defined in Section 612 Income and Corporation Taxes Act 1988 ("ICTA")) in respect of any employee exclusively engaged in the United Kingdom in the BUSINESS except under the UK PLAN, and no assurances or undertakings have been given as to the continuance or introduction or improvement of the provision of any such benefits. The UK PLAN has exempt approved status under Chapter I of Part XIV of the ICTA and a contracting out certificate is in force in respect of the UK PLAN relating to the employees of the BUSINESS in the United Kingdom, and none of WCI, WCI-LTD or BK-LTD knows of any circumstance which might cause such approval or such certificate to be withdrawn or to cease to apply. The UK PLAN has at all times been operated

in all material respects in accordance with its governing scheme documents and the governing scheme documentation is in substantial compliance with and has been administered in all material respects in accordance with all applicable laws. All taxes and expenses relating to the UK PLAN have been duly paid, and all contributions due to be made to the UK PLAN have been duly paid. None of the UK PLAN's investments are employer-related investments (as defined in Section 57A of the Social Security Pensions Act 1975). No material liability, claim, action or litigation has been made, commenced or threatened with respect to the UK PLAN (other than for benefits payable in the ordinary course). Death benefits payable under the UK PLAN are insured with an insurance company authorized under the U.K. Insurance Companies Act and all such contracts of insurance are enforceable and all premiums thereunder have been paid. No augmentations of benefits have been made under the UK PLAN. There have been disclosed to BUYER material particulars of the UK PLAN, including copies of all deeds and documents constituting the UK PLAN which are of current effect.

4.1.9 Trademarks, Service Marks, Trade Names & Copyrights. Part 1.1.5(a) of the SCHEDULE lists all TRADEMARKS, SERVICE MARKS, TRADE

NAMES and COPYRIGHTS and applications therefor either owned by BK, WCI-LTD or BK-LTD or otherwise used in the conduct of the BUSINESS, and all renewals, modifications and extensions thereof.

4.1.10 Patents. Part 1.1.6(a) of the SCHEDULE lists all PATENTS and applications for grant of PATENTS either owned by BK, WCI-LTD or BK-LTD or otherwise used in the conduct of the BUSINESS or pertaining to the production, processing or design of PRODUCTS by BK or BKL.

4.1.11 Licenses. The LICENSES constitute all of the licenses relating to or associated with the BUSINESS. Part 4.1.11 of the SCHEDULE includes copies of all material LICENSES pertaining to the BUSINESS, to which BK or BKL is a party or which may affect the rights of BK, WCI-LTD or BK-LTD. Except as disclosed in Part 4.1.11 of the SCHEDULE, none of BK, WCI-LTD or BK-LTD is aware of, or has received any notice or claim of, any conflict with its rights or the asserted rights of others regarding the LICENSES or any other intellectual property constituting ACQUIRED ASSETS or otherwise used in the BUSINESS. Except as set forth in Part 4.1.11 of the SCHEDULE, none of BK, WCI-LTD or BK-LTD has been required to pay (nor has any third party asserted any claim for) any royalty, license fee or similar type of compensation in connection with the conduct of the BUSINESS as it is now or heretofore has been conducted. The conduct of the BUSINESS by BK and BKL in the ordinary course does not infringe upon any intellectual property of any third parties.

4.1.12 Consents, Approvals, Etc. Except for the applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, no filing with or consent or approval of any court, regulatory authority or other public body, domestic or foreign, or third party is necessary in order for WCI and its affiliates to consummate the transactions contemplated by this Agreement.

4.1.13 Liabilities. None of BK, WCI-LTD or BK-LTD has any outstanding claims, liabilities or indebtedness, contingent or otherwise, except as set forth in the CURRENT BALANCE SHEET or referred to in the footnotes thereto, other than liabilities incurred subsequent to the date of the CURRENT BALANCE SHEET in the ordinary course of business not involving borrowings by BK or BKL and other than executory obligations of BK, WCI-LTD or BK-LTD to be performed after the CLOSING under the CONTRACTS

listed in Part 4.1.8 of the SCHEDULE and under the other CONTRACTS not required to be listed in Part 4.1.8 of the SCHEDULE due to the materiality thresholds contained in Section 4.1.8.

4.1.14. Disclosure. None of this Agreement, the SCHEDULE, any Exhibit or certificate attached hereto or delivered pursuant to this Agreement or any document or statement in writing which has been supplied by or on behalf of WCI, BK, WCI-LTD or BK-LTD in connection with the

transactions contemplated by this Agreement, taken as a whole, contains any untrue statement of a material fact or, taken as a whole, omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading; provided that this Section 4.1.14 shall not apply to any facts describing (a) the construction equipment industry generally, (b) the United States or the United Kingdom economies generally or (c) the appropriations process of the United States Congress under the Intermodal Surface Transportation Efficiency Act.

4.1.15. Inventory. The INVENTORIES are items of a quality usable or saleable by the BUSINESS in the ordinary course of business consistent with past practice, except for obsolete or defective materials for which adequate reserves are maintained on the books of the BUSINESS.

4.1.16. Accounts Receivable; Security Interests; Product Returns.

(a) The RECEIVABLES represent sales actually made in the ordinary course of business consistent with past practice, and are reflected on the books of the BUSINESS net of adequate reserves for doubtful accounts, and none of such RECEIVABLES is subject to any counterclaim or set-off.

(b) All security interests held by BK, WCI-LTD or BK-LTD in respect of dealer inventory financings represent valid first priority perfected liens on the property purported to be secured thereby.

(c) There are no liabilities for PRODUCT returns other than those arising in the ordinary course of BUSINESS consistent with past practice. To the best knowledge of WCI, there are no threatened claims for any PRODUCT returns relating to the BUSINESS.

4.1.17 Confirmation. The representations and warranties of WCI set forth in this Section 4.1 shall be true and correct in all material respects at and as of the CLOSING (as though such representations and warranties were made anew at and as of such date and any references, express or implied, to the date of this Agreement shall be deemed also to be references to the CLOSING).

4.1.18 Disclaimer of Other Warranties. BUYER acknowledges that it has been afforded the opportunity to inspect the ACQUIRED ASSETS and the records relating thereto and that, subject to the terms and conditions of this Agreement, it is satisfied with the condition thereof, and OTHER THAN AS CONTAINED IN THIS AGREEMENT AND THE SCHEDULE, WCI HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY TO BUYER OF ANY KIND WHATSOEVER. THUS, SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THE SALE AND TRANSFER OF THE ACQUIRED ASSETS PROVIDED FOR HEREIN IS MADE "AS IS" AND "WHERE IS"; FURTHERMORE, WITH THE EXCEPTION OF THE REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT AND THE SCHEDULE, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WHICH ATTACH TO THE ACQUIRED ASSETS OR AS TO

THE CONDITION, QUALITY AND/OR PERFORMANCE CAPABILITY OF ANY OF THE ACQUIRED ASSETS AND EXCEPT AS SET FORTH ELSEWHERE IN THIS AGREEMENT, BUYER IS ASSUMING THE SOLE RISK OF ANY DEFECTS IN SUCH ACQUIRED ASSETS OR DEFECTS IN SIMILAR PRODUCTS HEREAFTER MANUFACTURED BY BUYER, WHETHER OR NOT SAID DEFECTS RESULT FROM CONSTRUCTION OR DESIGN.

4.2 Representations and Warranties of BUYER. BUYER hereby represents and warrants to WCI as follows:

4.2.1 Corporate Data and Authority of BUYER.

(a) BUYER is a corporation duly organized, validly existing and in good standing under the laws of Delaware.

(b) BUYER has full power and, subject to the receipt by BUYER of the approval of its Board of Directors, authority to purchase and own the ACQUIRED ASSETS, to assume the ASSUMED LIABILITIES, and to conduct the BUSINESS to be transferred to BUYER hereunder at the CLOSING and to perform its other undertakings hereunder.

(c) Subject to the receipt by BUYER of the approval of its Board of Directors, the execution, delivery and performance of this Agreement and all related documents delivered by BUYER at the CLOSING will have been duly authorized by all necessary corporate action on the part of BUYER and will constitute valid and binding agreements of BUYER, enforceable against BUYER in accordance with the respective terms thereof, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the availability of the remedy of specific performance.

(d) Subject to the receipt by BUYER of the approval of its Board of Directors, the consummation of the transactions contemplated hereby will not conflict with the constitutive documents of BUYER.

(e) The consummation of the transactions contemplated hereby will not result in the breach of any term or provision of, or constitute a default under, any judgment, decree, indenture, mortgage or other agreement or instrument to which BUYER is a party or by which it is bound. Neither BUYER nor any subsidiary thereof is in default with respect to any agreement or instrument evidencing indebtedness for money borrowed or in the performance, observance or fulfillment of any covenant or condition in relation thereto.

4.2.2 Litigation and Other Matters. There are no actions, suits or proceedings pending or to BUYER's knowledge threatened against or affecting BUYER or any subsidiary thereof which may result in any material adverse change in the business, operations, properties or assets or in the

condition, financial or otherwise, of BUYER or any subsidiary thereof.

ARTICLE V - COVENANTS

5.1 Covenants of WCI. WCI covenants as follows:

5.1.1 Between the date of this Agreement and the CLOSING, and except as may otherwise be provided in this Agreement, WCI shall and shall cause BK, WCI-LTD and BK-LTD to carry on the BUSINESS in the ordinary course, consistent with its present practice and policies and WCI will not enter into (or permit BK, WCI-LTD or BK-LTD to enter into) any agreement or transaction except in such usual and ordinary course of business except as

might be otherwise provided herein without the prior written consent of BUYER. Between the date of this Agreement and the CLOSING, WCI shall cause BK, WCI-LTD and BK-LTD to use their reasonable best efforts, in the ordinary course of business, to preserve intact their respective business organizations, keep available the services of their officers and employees and maintain satisfactory relationships with licensors, suppliers, distributors, clients and others having business relationships with them, and BUYER shall cooperate with WCI in the performance of WCI's obligations in this sentence (provided that BUYER shall not be obligated to incur any obligation or make any commitment to any person or entity in connection with such cooperation). Prior to the CLOSING, except as may be first approved in writing by the BUYER, WCI shall cause BK, WCI-LTD and BK-LTD to refrain from (a) increasing the level of compensation payable to any officer, employee or agent, except for normal merit raises in accordance with past practice, (b) making any bonus, pension, retirement or other employee benefit payment to or with any such persons, except those that may accrue under plans identified in Part 4.1.8(c) of the SCHEDULE and except as described to BUYER in the WCI LETTER (as defined in Section 4.1.3(a)), or (c) making any material amendments to any of such plans or the benefits thereunder.

5.1.2 During the period from the date of this Agreement to the CLOSING, WCI shall supply to BUYER such information concerning the ACQUIRED ASSETS and the operation of the BUSINESS as BUYER shall reasonably request. Without limiting the generality of the foregoing, WCI shall permit BUYER and its officers, agents, lawyers, accountants and other representatives to examine the ACQUIRED ASSETS, wherever located, and shall furnish such representatives with all such information concerning the ACQUIRED ASSETS and the operation of the BUSINESS as they may reasonably request, and BUYER shall be permitted to make extracts from, or copies of, any of the records of WCI in this regard. All information so obtained by BUYER shall be subject to the provisions of Section 5.2.6.

5.1.3 At the CLOSING, WCI shall transfer or cause to be

transferred title to the REAL PROPERTIES owned by WCI-LTD or BK-LTD to BUYER by transfer, conveyance or assignment, as applicable, subject only to PERMITTED LIENS.

5.1.4 For a period of three (3) years after the CLOSING, WCI shall not and shall insure that its affiliates will not disclose or use any confidential business information related to the BUSINESS; provided, however, that WCI and such affiliates shall at all times be free to disclose or use such information (a) as shall be necessary for the accounting procedures and tax returns of WCI and such affiliates, (b) such as may be required by subpoena or court or governmental proceedings or otherwise required by law and then only with as much prior written notice to BUYER as is practical under the circumstances, (c) which after the CLOSING becomes generally available to the public other than as a result of disclosure by WCI or any of WCI's affiliates or representatives or (d) which after the CLOSING becomes available to WCI or any of such affiliates on a non-confidential basis from a source other than BUYER, any of its affiliates, or any of their respective representatives, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to BUYER or any other party with respect to such confidential business information.

5.1.5 For a period of ten (10) years after the CLOSING and thereafter upon proof of need therefor for legitimate business purposes, to the extent that WCI or any successor thereto is reasonably able by virtue

of the availability of any books, records and qualified personnel relating to the BUSINESS, and if it can be done without unduly disrupting WCI's or its affiliates' businesses, WCI shall (i) make or cause to be made available to BUYER, its related companies or successors, and permit BUYER and its agents to inspect and copy, such books and records and (ii) assist in arranging discussions with (and calling as witnesses of BUYER) officers, employees and agents of WCI on matters which directly relate to the BUSINESS, subject to the reimbursement of WCI of any actual out-of-pocket expenses incurred by WCI in the performance of its obligations under this Section 5.1.5.

WCI shall use its best efforts to retain such books and records to be retained for such period. Before WCI destroys any of such books and/or records, WCI shall so advise BUYER and offer BUYER a reasonable opportunity to take possession of all such books and records. If WCI wishes to destroy any such books and records during such period, WCI shall give BUYER at least sixty days' prior written notice so that BUYER may take possession of such books and records deemed important by BUYER. If BUYER does not take possession or otherwise remove such books and records from WCI's premises within such sixty-day period, WCI may destroy such books and records.

5.1.6 As soon as practicable after the CLOSING, but in no event

later than 90 days thereafter, WCI shall transfer to (and in the name of) BK all intellectual property registrations that are in the name of WCI or any of its affiliates (other than BK) that relate to intellectual property included in the ACQUIRED ASSETS of BK.

5.1.7 Subject to Section 5.1.8 below, WCI shall take all steps necessary to ensure that as of the CLOSING, BK shall be the exclusive owner of, and shall have the exclusive right to use (other than the limited right of the Purchasers to use the "Blaw-Knox" name as specified in the Blaw-Knox Trademark Agreement referred to in Section 3.3.4 above), the "Blaw-Knox" trade name and trademark and logo (both with and without the diamond).

5.1.8 WCI shall use its best efforts to negotiate a consensual termination of the Trademark Agreement effective June 30, 1987 between Italimpianti of America, Incorporated ("IAI") and WCI (the "IAI Trademark Agreement"). In the event that, notwithstanding WCI's best efforts as specified in the preceding sentence, WCI is unable to negotiate a consensual termination of the IAI Trademark Agreement prior to the CLOSING, then (a) the FINAL CASH PRICE and the PRELIMINARY CASH PRICE shall automatically be reduced by US$250,000 and (b) WCI shall cause the IAI Trademark Agreement to be assigned to BK, at no cost to BK.

5.1.9 Prior to the CLOSING, WCI shall cause the master equipment lease dated May 6, 1988 between WCI and XL/Datacomp, Inc. ("Datacomp"), and any software or other licenses or agreements entered into by WCI or any of its affiliates (other than BK) that constitute ACQUIRED ASSETS of BK to be assigned to BK, at no cost to BK, and shall deliver to BUYER an acknowledgment of Datacomp consenting to such assignment.

5.1.10 Prior to the CLOSING, WCI shall cause the trademark agreement referred to in Part 1.1.5(b) of the SCHEDULE, and the patent license referred to in Part 1.6(b) of the SCHEDULE, each between BK and BK-LTD, to be terminated in full, at no cost to BK, pursuant to documentation reasonably satisfactory to BUYER or, at BUYER's election, to be assigned to BUYER or its designee(s), at no cost to BUYER or such designee(s), pursuant to documentation reasonably satisfactory to BUYER.

5.1.11 WCI will and will cause its affiliates and advisors to immediately cease any existing discussions or negotiations with any third parties conducted prior to the date hereof with respect to any merger, business combination, sale of assets (other than sales of inventory in the ordinary course of business consistent with past practice), purchase of assets (other than purchases permitted by this Agreement), sale or purchase of shares of capital stock or other securities or similar transaction involving any third party and the BUSINESS (an "ACQUISITION TRANSACTION"). WCI will not and will ensure that none of its affiliates or any directors, officers, employees or advisors shall, directly or indirectly, encourage, solicit, participate in or initiate discussions or

negotiations with, or provide any information to, any corporation, partnership, person or other entity or group (other than BUYER or its respective affiliates, directors, officers and employees) concerning any ACQUISITION TRANSACTION. WCI will immediately communicate to BUYER any inquiries or proposals received by it or its affiliates or advisors that are brought to the attention of Daniel Elliott or Wayne Schierbaum of WCI or Henri Talerman of Lehman Brothers regarding an ACQUISITION TRANSACTION and the terms thereof.

5.2 Covenants of BUYER. BUYER covenants as follows:

5.2.1 For a period of ten (10) years after the CLOSING, and thereafter upon proof of need therefor for legitimate business purposes, to the extent that BUYER or any successor thereto is reasonably able by virtue of the availability of any books, records and qualified personnel relating to the BUSINESS, and if it can be done without unduly disrupting BUYER's or its affiliates' businesses, BUYER shall, (i) make or cause to be made available to WCI all books and records included in the ACQUIRED ASSETS that are needed by WCI or any of its related companies and permit WCI and its agents to inspect and copy such books and records and (ii) assist in arranging discussions with (and the calling as witnesses of WCI) officers, employees and agents of BUYER and its affiliated companies on matters which directly relate to the BUSINESS subject to the reimbursement of BUYER for any actual out-of-pocket expenses incurred by BUYER in the performance of its obligations under this Section 5.2.1.

BUYER shall use its best efforts to retain such books and records to be retained for such period. In the event BUYER should discontinue the manufacture or sale of the PRODUCTS or similar products, before BUYER destroys any of the books and/or records constituting part of the ACQUIRED ASSETS transferred to BUYER by WCI pursuant to this Agreement, BUYER shall so advise WCI and offer WCI a reasonable opportunity to take possession of all such books and records. If BUYER wishes to destroy any such books and records during such period, Buyer shall give WCI at least sixty days' prior written notice so that WCI may take possession of such books and records deemed important by WCI. If WCI does not take possession or otherwise remove such books and records from Buyer's premises within such sixty-day period, Buyer may destroy such books and records.

5.2.2 After the CLOSING, and for the remainder of any standard express written warranty period or express extended or expanded warranty period relating to the PRODUCTS referred to below, BUYER acknowledges that BK (or a successor company) shall have the obligation to BK's distributors to perform BK's standard express written warranties and express written extended and expanded warranties for those PRODUCTS manufactured and/or sold by BK prior to the CLOSING by repairing and/or replacing the defective part or parts of the affected PRODUCT in accordance with and subject to the

limitations of the standard express written warranty terms and conditions and the express written extended and expanded warranty terms and conditions, respectively, applicable to those PRODUCTS (the "WARRANTY OBLIGATIONS"); provided, however, that neither BK nor any successor company shall have any obligations with respect to such PRODUCTS for (i) implied warranties, if any, whether imposed as a matter of law or otherwise or (ii) any express warranties other than the standard express warranty attached as Part 5.2.2 of the SCHEDULE or (iii) any extended or expanded warranties other than the express written extended or expanded warranties specifically included in Part 5.2.2 of the SCHEDULE.

5.2.3 After the CLOSING neither BUYER nor any successor to the BUSINESS shall use or make reference to the names "White Consolidated Industries, Inc." or "White", the initials WCI, the slogan "One of The White Consolidated Industries WCI" or any other trade names or trademarks of WCI or any affiliated company thereof, other than those included in the ACQUIRED ASSETS, nor state or imply that BUYER is an agent of WCI, or that WCI or any affiliated company thereof is in any way responsible for products produced by BUYER; any reference to WCI shall be obliterated from all printed materials and facilities relating to the BUSINESS; and BUYER shall, to the extent practical and as soon as possible after the CLOSING, take steps to add language to its products, letterheads, warranty and advertising literature or other printed public materials constituting ACQUIRED ASSETS and to take such other actions at the facilities included in the ACQUIRED ASSETS to indicate clearly that the BUSINESS is being operated, and that the ACQUIRED ASSETS are owned, by BUYER or an affiliate thereof.

5.2.4 BUYER shall establish new bank accounts in the name of the companies in which it intends to continue the BUSINESS in the United States and the United Kingdom and, effective the first business day after the CLOSING, such new bank account and appropriate check stock therefor shall be used for all funds pertaining to the conduct of the BUSINESS after the CLOSING by the BUYER. WCI will cooperate and will cause its affiliates to cooperate with BUYER in establishing such new bank accounts promptly after execution of this Agreement to the extent necessary to permit BUYER to establish such new bank accounts as of the date of the CLOSING.

5.2.5 BUYER shall use its reasonable best efforts from time to time, at the reasonable request of WCI, to cooperate with WCI in providing WCI access to the records of BUYER's business and, through qualified employees of BUYER, with information and technical assistance in respect of any existing claims or litigation or claims or litigation subsequently brought against WCI (including, without limitation, any Workers' Compensation claims included in the Excluded Liabilities) involving the conduct of the BUSINESS prior to the CLOSING or any PRODUCTS manufactured and/or sold by WCI prior to the CLOSING, including requests for the production of documents, supplying literature and information, providing answers to interrogatories, product inspections and reports thereon and the consultation and appearance of such qualified employees of BUYER on a

reasonable basis as an expert or fact witness in trials subject only to the reimbursement of BUYER for reasonable actual out-of-pocket expenses incurred by BUYER in the performance of its obligations under this Section 5.2.5. BUYER shall use its best efforts to retain such documents and records set forth in Part 5.2.5 of the SCHEDULE for 10 years after the CLOSING DATE as are necessary or useful in defending the foregoing types of claims and provide WCI with reasonable access thereto.

5.2.6 In the event the transactions contemplated by this Agreement shall not be consummated, BUYER shall keep strictly confidential all of the information that BUYER, its representatives or affiliates shall have obtained, either before or after the date of this Agreement, about WCI and the BUSINESS, and BUYER shall promptly deliver to WCI all information, work papers, copies of documents and all other items generated or obtained by BUYER, its representatives and affiliates in its investigations, and all copies thereof and BUYER shall refrain from using or disclosing to others any such information, papers, or documents.

The obligation to keep such information confidential and to refrain from using such information shall not apply to any information which (a) becomes generally available to the public other than as a result of a disclosure by BUYER or any of its representatives, (b) is necessary for the accounting procedures and tax returns of BUYER and its affiliates, (c) may be required by subpoena or court or governmental proceedings or otherwise required by law and then only with as much prior written notice to WCI as is practical under the circumstances, (d) was in the possession of BUYER prior to it being furnished to BUYER by or on behalf of WCI, provided that the source of such information was not known by BUYER to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to WCI or any other party with respect to such information or (e) becomes available to BUYER on a non-confidential basis from a source other than WCI or any of WCI's representatives, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to WCI or any other party with respect to such information.

5.2.7 BUYER shall provide WCI with a copy of any notice that BUYER submits to any governmental agency in respect of matters referred to in Section 3.2(h) above and, to the extent reasonably practicable, shall give WCI an opportunity to comment on the substance of such notice and/or to file such supplemental notices with the relevant governmental agencies as WCI shall deem appropriate, provided that nothing contained in this Section 5.2.7 shall limit or otherwise affect BUYER's or BK's ability to take such actions as it may deem appropriate under applicable law or its internal policies or procedures.

5.2.8 With respect to the PATENT CLAIM referred to in Section 3.2(n) above, in the event that BK or BUYER or any other entity conducting the BUSINESS shall at any time be prohibited or limited in its use of any of the intellectual property referred to in the Bethea Letter because of an actual or alleged infringement occurring in whole or in part prior to the CLOSING, then WCI will obtain for BK or BUYER or such other entity, as applicable, at WCI's own cost, an indefinite, royalty-free right to use such intellectual property in the conduct of the BUSINESS. BUYER shall cooperate with WCI in the performance of WCI's obligations under this Section 5.2.8 to the extent described in Section 5.2.5.

5.2.9 In the event that Electrolux Finance Ltd. ("ELECTROLUX FINANCE") shall take possession of any PRODUCTS leased by ELECTROLUX FINANCE to customers of the BUSINESS as a result of a default by such customers under such leasing arrangement, then, for so long as BUYER shall control the entity conducting the UK portion of the BUSINESS, BUYER will cause such entity to cooperate with ELECTROLUX FINANCE with respect to the possible resale or other disposition of such repossessed PRODUCTS.

5.3 Mutual Covenants. WCI and BUYER covenant as follows:

5.3.1 In the event that WCI is in receipt after the CLOSING of funds due BUYER, WCI shall forthwith pay the amount it received to BUYER, and if BUYER is in receipt of funds due WCI, BUYER shall forthwith pay the amount it received to WCI. In the event that WCI is legally required to pay and makes a payment after the CLOSING for an obligation of BUYER, BUYER shall forthwith reimburse WCI for such payment, and if BUYER is legally required to pay and makes a payment for an obligation of WCI, WCI shall forthwith reimburse BUYER.

5.3.2 WCI and BUYER will cooperate with each other in the development and distribution of all news releases and other public information disclosures relating to the proposed purchase and sale transaction and any material transactions incident thereto. Neither BUYER nor WCI will promulgate any such release or make any other public disclosures without the prior consent of the other party or its authorized representative. The two preceding sentences shall not apply to any disclosure that is required to be made by applicable law, rule or regulation, including rules and regulations of applicable securities exchanges, provided that before any party shall make any such disclosure, to the extent reasonably practicable such party shall provide the other party with prior notice of such disclosure.

ARTICLE VI - EMPLOYEES AND EMPLOYEE BENEFITS

6.1 Provisions relating to All Employees.

6.1.1 All employees exclusively engaged in the BUSINESS immediately prior to the CLOSING (the "EMPLOYEES") shall either remain employees of BK or become employees of BUYER or one of its subsidiaries on and as of the CLOSING. If BUYER at any time within sixty (60) days after the CLOSING engages in a "mass layoff" or "plant closing" as these terms are defined in the Worker Adjustment and Retraining Notification Act of 1988 ("WARN"), BUYER shall be fully responsible for and indemnify and hold WCI harmless against any liability arising as a result of such "mass layoff" or "plant closing" under WARN. If BK at any time within sixty (60) days before the CLOSING engages in such a "mass layoff" or "plant closing," WCI shall be fully responsible for and indemnify and hold BK and BUYER harmless against any liability arising as a result of such "mass layoff" or "plant closing."

6.1.2 (a) Prior to the CLOSING, BK and BKL have each provided benefits (other than pension benefits) to EMPLOYEES and to former employees of the BUSINESS and retirees of certain predecessors (collectively "FORMER EMPLOYEES") and their eligible dependents (where applicable) under the BENEFIT PLANS identified in Part 4.1.8(c) of the SCHEDULE. Except as otherwise expressly provided in this Agreement, all benefits and coverages provided to such EMPLOYEES and their eligible dependents under the BENEFIT PLANS shall terminate as of the CLOSING except for those claims and expenses incurred prior to the CLOSING that are eligible for payment under the terms of WCI's BENEFIT PLANS.

(b) BUYER shall provide or cause one of its affiliates to provide, effective as of the CLOSING, for all EMPLOYEES and their dependents, employee benefits which BUYER determines are appropriate under

the circumstances. Without limiting the scope of the foregoing, BUYER shall provide or cause one of its affiliates to provide, beginning as of the CLOSING, to all EMPLOYEES and FORMER EMPLOYEES and their eligible dependents, such group health benefit coverage as may be required to eliminate any and all obligations of WCI or its subsidiaries or other affiliates to provide "continuation coverage" for such persons under Sections 601 through 607 of ERISA or under Section 4980B of the CODE (as a condition to the avoidance of a tax thereunder).

6.1.3 BUYER shall furnish WCI any payroll data necessary to enable WCI to properly report WCI's Federal, State and local, Social Security and other payroll tax data with respect to BK for the period January 1, 1994 through the CLOSING. Upon WCI's request, BUYER shall deliver to the EMPLOYEES Federal and State W-2 forms required to be furnished by WCI for the period January 1, 1994 through the CLOSING.

6.2 Benefits Relating to USA Salaried Employees (NON-UNION PLANS).

6.2.1 BK's Non-Union Plans. EMPLOYEES located in the United States who are not covered by a COLLECTIVE BARGAINING AGREEMENT ("USA Non-Union Employees") are covered by the White Consolidated Industries, Inc. Pension Plan For Non-Bargaining Salaried Employees, a tax-qualified defined benefit pension plan ("WCI's Non-Union Pension Plan") and the White Consolidated Industries, Inc. Retirement Savings Plan for Non-Bargaining Employees, a tax-qualified 401(k) plan ("WCI's Non-Union Savings Plan"), copies of which have been furnished to BUYER.

(a) BUYER shall neither adopt nor become a sponsoring employer of WCI's Non-Union Pension and Savings Plans.

(b) WCI has informed BUYER that each USA Non-Union Employee shall be considered by WCI to have terminated participation in WCI's Non-Union Pension and Savings Plans as of the CLOSING. Accordingly, the eligibility of each such USA Non-Union Employee for a benefit under WCI's Non-Union Pension and Savings Plans and the amount of such benefits shall be determined under the terms of WCI's Non-Union Pension and Savings Plans as in effect as of the CLOSING (as such Plans may be amended by WCI) on the same basis as such determination would be made for any other employee covered by such Plans whose participation in such plans with WCI completely and finally terminates as of the CLOSING without regard to the transactions contemplated by this Agreement.

6.3 Collective Bargaining Agreements and Hourly Employees Covered Thereby.

6.3.1 Collective Bargaining Agreement. Hourly Employees of the BUSINESS are covered by the COLLECTIVE BARGAINING AGREEMENTS.

6.3.2 BK Retirement Benefit Plan.

For employees who are covered by the BK COLLECTIVE BARGAINING AGREEMENT ("Union Employees"), WCI currently maintains the Blaw-Knox Construction Equipment Retirement Plan ("BLAW-KNOX PLAN"), a copy of which is set forth in Part 6.3.2 of the SCHEDULE.

(a) On the CLOSING DATE, BUYER shall adopt and assume or cause BK to adopt and assume, and shall replace or cause BK to replace WCI as the sole sponsoring employer of the BLAW-KNOX PLAN, subject to any amendments which BUYER may adopt to the BLAW-KNOX PLAN after the CLOSING.

(b) Effective as of the CLOSING DATE, WCI shall cause Mellon Bank, N.A., as master trustee pursuant to a Master Trust Agreement with WCI effective January 2, 1992 (the "Master Trust"), to segregate from all other assets held in the Master Trust a cash amount equal to the equitable share of the assets of the BLAW-KNOX PLAN in such Master Trust and, pursuant to Section 22.1 of the Master Trust, to hold such assets as trustee of a separate trust for the BLAW-KNOX PLAN (the "Pension Trust").

The equitable share of the BLAW-KNOX PLAN in the Master Trust shall be determined by Mellon Bank, N.A. in accordance with the terms of the Master Trust. On the CLOSING DATE, or within 90 days thereafter, BUYER shall establish a separate trust, or a separate plan trust account within BUYER'S master pension trust, for the BLAW-KNOX PLAN ("BUYER'S TRUST") which satisfies the requirements for tax exemption pursuant to Section 501(a) of the CODE (as part of a plan which is qualified under Section 401(a) of the CODE). On or within 90 days of the establishment of BUYER'S TRUST, WCI shall direct Mellon Bank, N.A. to transfer to BUYER'S TRUST in cash all of the assets of the BLAW-KNOX PLAN then held by Mellon Bank, N.A. in the Pension Trust. Prior to the transfer of assets, WCI will provide to BUYER a written schedule of the amount of such assets (and the methodology used in determining such amount), prepared by Mellon Bank, N.A., which schedule shall be subject to review by BUYER's actuary for the purpose of confirming that the calculation was made in accordance with the terms of the Master Trust Agreement and the actuarial assumptions described in the Schedule entitled "White Consolidated Industries Inc. Blaw-Knox Construction Equipment Corporation Hourly Pension Plan (040)-Statement of Actuarial Assumptions and Actuarial Cost Method" (attached hereto as Part 6.3.2(b) of the SCHEDULE). In the event that BUYER does not send WCI written notice of its objections within 45 days following receipt of Mellon Bank, N.A.'s schedule, then such evidence shall be deemed to be approved. In the event that BUYER does send WCI written notice of its objections within 45 days as described above, then WCI's actuary and BUYER's actuary will attempt to reach agreement as to any disputed matter relating to the transfer. In the event they do not reach agreement, then WCI's actuary and BUYER's actuary will select a third actuary, the expense of which shall be borne equally by BUYER and WCI, to make a final and conclusive determination of the amount of the transfer.

(c) WCI shall adopt appropriate amendments to the BLAW-KNOX PLAN and the Pension Trust, and BUYER and WCI shall take all other actions, as may be necessary or appropriate to establish BUYER as successor to WCI as to all powers, duties and obligations under or with respect to the BLAW-KNOX PLAN and, effective as of the CLOSING DATE, BUYER shall assume such powers, duties and obligations, provided that all such amendments and actions shall be subject to the prior review and approval of BUYER. BUYER shall amend the BLAW-KNOX PLAN to comply with the requirements of the CODE relating to the qualifications of such PLAN under Section 401(a) of the CODE and exemption of its related trust from income taxation pursuant to Section 501(a) of the CODE. Such amendment shall be made effective retroactively to the dates that are required pursuant to the Tax Reform Act of 1986 (P.L. 99-514), the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647), the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239), the Revenue Reconciliation Act of 1990 (P.L. 101-508) and the regulations and rulings under such laws (collectively referred to as "TRA '86 Requirements"); shall be adopted by the BUYER not later than the time permitted pursuant to the provisions of Section 401(b) of the CODE, Treasury Regulations Section

1.401(b)-1, IRS Notice 90-73, IRS Announcement 92-29, IRS Notice 92-36, and other pronouncements made pursuant to Treasury Regulation Section 1.401(b)-1(e); and shall include therein provisions which reflect all of the administrative practices pertinent to the TRA '86 Requirements that have been implemented prior to the CLOSING DATE with respect to the BLAW-KNOX PLAN. WCI shall cooperate with BUYER in determining which administrative procedures, if any, have been implemented prior to the CLOSING DATE.

(d) After adopting and assuming the BLAW-KNOX PLAN as of the CLOSING DATE, (i) BUYER shall have full responsibility for the maintenance, operation or termination of the BLAW-KNOX PLAN and (ii) without limiting the generality of the foregoing, BUYER shall be responsible for and shall indemnify and hold WCI harmless against any liability, obligation, claim, expense, loss, tax or penalty arising out of the BLAW-KNOX PLAN, including (A) any and all pension and survivor benefits provided for or which the sponsoring employer is obligated to provide under the BK COLLECTIVE BARGAINING AGREEMENT, (B) all claims for benefits under the BLAW-KNOX PLAN, (C) compliance with the reporting and disclosure requirements of the CODE and ERISA for Plan Years ending after December 31, 1993 with respect to the BLAW-KNOX PLAN (except that any such report or disclosure required to be made prior to the CLOSING shall be the responsibility of WCI), (D) satisfaction of the minimum funding standards arising under the CODE and ERISA with respect to the BLAW-KNOX PLAN for Plan Years ending after December 31, 1993, (E) any and all liability relating to the termination of the BLAW-KNOX PLAN and (F) any amendment adopted by BUYER to the BLAW-KNOX PLAN that adversely affects the qualification of the BLAW-KNOX PLAN under Section 401(a) of the CODE for any year, and (G) the failure to comply with the requirements of Section 6.3.2(c).

(e) If BUYER causes BK to assume the BLAW-KNOX PLAN, then all references to BUYER in this Section 6.3 (other than the reference in the first line of Section 6.3.2(a), the fourteenth line of Section 6.3.2(b), and the first and second lines of this Section 6.3.2.(e)) shall be deemed to be references to BK.

6.4 Pension Benefits Relating to United Kingdom Employees.

6.4.1 Information Concerning the White Consolidated International Holdings Pension Plan. With respect to employees of BKL ("UK EMPLOYEES"), WCI-LTD presently maintains the White Consolidated International Holdings Pension Plan, including a supplemental Executive Pension Plan (collectively the "BKL's UNITED KINGDOM PLAN"), a copy of which is set forth in Part 6.4.1 of the SCHEDULE.

6.4.2 Assumption of BKL's UNITED KINGDOM PLAN. (a) As of the

CLOSING, BUYER shall adopt and assume or cause the entity designated by it to adopt and assume BKL'S UNITED KINGDOM PLAN and shall succeed or cause such entity to succeed to all rights and obligations of WCI or its nominee thereunder.

(b) Notwithstanding anything contained in this Agreement to the contrary, WCI agrees to cause the value of the assets of BKL's UNITED KINGDOM PLAN on the CLOSING DATE to be no more than U.K. 23,000 pound sterling less than the accrued liabilities (allowing for, inter alia, projected salary increases) of BKL's UNITED KINGDOM PLAN on the CLOSING DATE, as determined by applying the actuarial and financial assumptions and methods described in the letter from David L. Lindsay of C E Health (Employee Benefits) Ltd. to Mr. E. B. Halton of BK-LTD, dated February 28, 1992 (attached hereto as Part 6.4.2 of the SCHEDULE) to BKL's UNITED KINGDOM PLAN benefit provisions

in effect on the CLOSING DATE, but with such alterations as may be necessary to ensure that the benefit provisions comply with Article 119 of the Treaty of Rome. Any dispute between the parties arising out of this Section 6.4.2(b) shall be resolved in a manner similar to the dispute resolution procedures set forth in Section 6.3.2(b) above.

(c) BUYER shall have full responsibility for the maintenance and administration of BKL's UNITED KINGDOM PLAN and the trust thereunder, and for all expenses, liabilities and obligations with respect thereto, whether contingent, absolute, known or unknown, and WCI shall not have any such responsibility.

(d) If BUYER causes an entity designated by it to assume BKL's UNITED KINGDOM PLAN, then all references to BUYER in Section 6.4 (other than the reference in the second line of Section 6.4.2(a) and the first and second lines of this Section 6.4.2(d)) shall be deemed to be references to such entity.

6.5 The provisions of Sections 6.2.1 shall be subject in all respects to such modifications in WCI's Non-Union Pension and Savings Plans as may be required to comply with applicable law and to satisfy the requirements for tax qualification. The provisions of Section 6.3.2 shall be subject in all respects to such modifications in BUYER's or BK's plans, as applicable, as may be required to comply with applicable law and to satisfy the requirements for tax qualification. The provisions of Section 6.4.2 shall be subject in all respects to such modifications in BKL's UNITED KINGDOM PLAN as may be required to enable BUYER or its designee to become the principal employer and to satisfy all requirements for Inland Revenue exempt approval.

6.6 Required Contributions. WCI shall cause BK and BKL to discharge any liabilities of BK and BKL on account of any expenses or liabilities of the BENEFIT PLANS, PENSION PLANS and OTHER EMPLOYEE PLANS for the period up to and including the date of the CLOSING.

ARTICLE VII - CONDITIONS TO CLOSING

7.1 Conditions to the Obligations of BUYER.

The obligations of BUYER to purchase the SHARES and the BKL ACQUIRED ASSETS under this Agreement are subject to the following conditions (unless waived in writing in whole or in part by BUYER):

7.1.1 WCI shall have furnished to BUYER:

(a) Certificate of Good Standing for WCI certified as of a recent date by the Secretary of State of Delaware; and

(b) Certificate of Good Standing for BK certified as of a recent date by the Secretary of State of Illinois; and

(c) Certificate of Good Standing for BK and WCI-LTD, each certified as of a recent date by the Secretary of State of Delaware; and

(d) A certificate of the Secretary or an Assistant Secretary of WCI certifying (i) as to the absence of amendments to the constitutive documents of BK; (ii) as to the absence of proceedings for dissolution

or liquidation of BK; (iii) a copy of the resolution or resolutions adopted by the Board of Directors of WCI, authorizing the execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby, and of AB Electrolux, authorizing the ELECTROLUX INDEMNITY AGREEMENT referred to below and the other transactions contemplated hereby; and (iv) as to the incumbency and signatures of officers; and

(e) A certificate of the Secretary or an Assistant Secretary of BK-LTD certifying (i) as to the absence of amendments to the constitutive documents of BK-LTD; (ii) as to the absence of proceedings for dissolution or liquidation of BK-LTD; (iii) a copy of the resolution or resolutions adopted by the Board of Directors of BK-LTD, authorizing the consummation of the transactions contemplated hereby; and (iv) as to the incumbency and signatures of officers; and

(f) A certificate of the Secretary or an Assistant Secretary of WCI-LTD certifying (i) as to the absence of amendments to the constitutive documents of WCI-LTD; (ii) as to the absence of proceedings for dissolution or liquidation of WCI-LTD; (iii) a copy of the resolution or resolutions adopted by the Board of Directors of WCI-LTD, authorizing the consummation of the transactions contemplated hereby; and (iv) as to the incumbency and signatures of officers.

7.1.2 WCI shall have performed in all material respects all of its agreements and covenants which are required to have been performed by it at or prior to the CLOSING.

7.1.3 The representations and warranties of WCI set forth in this Agreement and the SCHEDULE shall be correct in all material respects on and as of the CLOSING.

7.1.4 At the CLOSING, BUYER shall have received from the Senior Vice President-Law and General Counsel of WCI (with respect to U.S. law matters) and from Julie O'Niell, counsel to WCI-LTD and BK-LTD (with respect to U.K. law matters) an opinion dated the CLOSING, in form and substance reasonably satisfactory to BUYER, to the effect set forth in Subsections 4.1.1(a) through (e) and to the best knowledge of such counsel to the effect set forth in Subsection 4.1.4(a).

7.1.5 At the CLOSING, BUYER shall have received a certificate dated the CLOSING and signed by an authorized officer of WCI which evidences the compliance by WCI with the conditions contained in Sections 7.1.2, 7.1.3, 7.1.8 and 7.1.9.

7.1.6 The filing and waiting period requirements, if any, of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, relating to the transactions contemplated by this Agreement shall have been complied with.

7.1.7 BUYER shall have received certificates representing the SHARES, duly executed in blank, with all necessary transfer stamps affixed thereto and cancelled.

7.1.8 No action or proceeding shall have been instituted or, to the knowledge of WCI, threatened before a court or other government body or by any public authority to restrain or prohibit any of the transactions contemplated hereby.

7.1.9 All indebtedness of WCI and its affiliates (and of directors, officers and employees of WCI, BK, WCI-LTD and BK-LTD, other than customary travel advances) to BK, WCI-LTD and BK-LTD shall have been repaid in full.

7.1.10 BUYER shall have received resignations of officers and directors of BK as designated by BUYER.

7.1.11 All legal matters relating to this Agreement and the consummation of the transactions contemplated hereby shall have been completed to the reasonable satisfaction of counsel to BUYER.

7.1.12 AB Electrolux shall have executed and delivered to BUYER the Electrolux Indemnity Agreement in form and in substance as set forth in Exhibit A hereto ("ELECTROLUX INDEMNITY AGREEMENT"), and BUYER shall have further received an opinion of counsel to AB Electrolux, in form and in substance, and from counsel, acceptable to BUYER in its sole discretion.

7.1.13 The Board of Directors of BUYER shall have adopted resolutions approving this Agreement and the transactions contemplated hereby.

7.1.14 BUYER shall have received a complete, final SCHEDULE, which SCHEDULE shall be reasonably satisfactory to BUYER in form and in substance.

7.1.15 BUYER shall have completed its due diligence in respect of the BUSINESS and the transactions contemplated by this Agreement, and the results of such due diligence shall be reasonably satisfactory to BUYER.

7.2 Conditions to the Obligations of WCI.

The obligations of WCI to sell the SHARES and the BKL ACQUIRED ASSETS under this Agreement are subject to the following conditions (unless waived in writing in whole or in part by WCI):

7.2.1 BUYER shall have furnished WCI:

(a) a Certificate of Good Standing of BUYER, certified as of a recent date by the Secretary of State of Delaware; and

(b) a certificate of the Secretary or an Assistant Secretary of BUYER certifying (i) a copy of BUYER's By-laws; (ii) a copy of the articles of incorporation of BUYER; (iii) as to the absence of proceedings for dissolution or liquidation of BUYER; (iv) a copy of the resolution or resolutions adopted by the Board of Directors of BUYER, authorizing the execution, delivery and performance of this Agreement by BUYER; and (v) as to the incumbency and signatures of officers.

7.2.2 BUYER shall have performed in all material respects all of its agreements and covenants which are required to have been performed by it at or prior to the CLOSING.

7.2.3 The representations and warranties of BUYER set forth in this Agreement shall be correct in all material respects on and as of the CLOSING.

7.2.4 At the CLOSING, WCI shall have received from Bernard D. Henely, Esq., Vice President and General Counsel of BUYER, an opinion

dated the CLOSING, in form and substance reasonably satisfactory to WCI, to the effect set forth in Subsections 4.2.1(a) through (e) and to the best knowledge of such counsel to the effect set forth in Section 4.2.2.

7.2.5 At the CLOSING, WCI shall have received a certificate dated the CLOSING and signed by an authorized officer of BUYER which evidences the compliance by BUYER with the conditions contained in Sections 7.2.2, 7.2.3 and 7.2.9.

7.2.6 All legal matters relating to this Agreement and the consummation of the transactions contemplated hereby shall have been completed to the reasonable satisfaction of counsel to WCI.

7.2.7 The filing and waiting period requirements, if any, of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, relating to the transactions contemplated by this Agreement shall have been complied with.

7.2.8 At the CLOSING, WCI shall have received from BUYER the PRELIMINARY CASH PRICE.

7.2.9 No action or proceeding shall have been instituted or, to the best knowledge of BUYER, threatened before a court or other government body or by any public authority to restrain or prohibit any of the transactions contemplated hereby.

ARTICLE VIII - CLOSING

8.1 Closing. The "CLOSING" hereunder shall take place on the third business day following the satisfaction of the conditions set forth in Sections 7.1.6, 7.1.12, 7.1.13, 7.1.14, 7.1.15 and 7.2.7 above (such date, the "CLOSING DATE"), at 10:00 A.M., E.S.T., at the offices of White & Case, 1155 Avenue of the Americas, New York, New York (or at such other place and/or time as may be mutually agreed upon by the parties) and shall be effective as of twelve o'clock (12:00) midnight after the close of business on the day immediately preceding the CLOSING DATE. Notwithstanding the foregoing, in the event the CLOSING shall not have occurred on or prior to June 30, 1994, then either party may terminate this Agreement upon prior written notice to the other party.

8.2 WCI's Obligations. At the CLOSING, WCI shall deliver to BUYER the following:

8.2.1 The opinion of counsel for WCI specified in Section 7.1.4.

8.2.2 The certificates specified in Sections 7.1.1 and 7.1.5.

8.2.3 Appropriate instruments of transfer for the REAL PROPERTIES of BKL and any LEASEHOLDS of BKL, in form and substance

satisfactory to BUYER.

8.2.4 A Bill of Sale and General Assignment (or other appropriate instruments of transfer) for the remainder of the ACQUIRED ASSETS of BKL, in form and substance satisfactory to BUYER.

8.2.5 To the extent required by applicable law, an Assignment of the BKL COLLECTIVE BARGAINING AGREEMENT, in form and substance satisfactory to BUYER.

8.2.6 The unissued stock certificates, minute book and other corporate records of BK.

8.2.7 The Transitional Services Agreement in form and in substance as set forth in Exhibit B hereto ("TRANSITIONAL SERVICES AGREEMENT"), executed by WCI.

8.2.8 The Non-competition Agreement in form and in substance as set forth in Exhibit C hereto ("NON-COMPETITION AGREEMENT"), executed by WCI.

8.2.9 A non-foreign person affidavit as required by Section 1445 of the CODE.

8.2.10 The ELECTROLUX INDEMNITY AGREEMENT, executed by AB Electrolux, together with the opinion of counsel referred to in Section 7.1.12.

8.2.11 A certificate signed by an authorized officer of WCI to the effect that all liens (other than PERMITTED LIENS) on any of the ACQUIRED ASSETS, including any liens relating to the Revenue Bonds, have been fully released.

8.3 BUYER'S Obligations. At the CLOSING, BUYER shall deliver to WCI the following:

8.3.1 The opinion of counsel for BUYER specified in Section 7.2.4.

8.3.2 The certificates specified in Sections 7.2.1 and 7.2.5.

8.3.3 Evidence of transfer of Federal Funds or a certified or official bank check drawn on a bank satisfactory to WCI and payable to the order of WCI in the amount of the PRELIMINARY CASH PRICE as specified in Section 2.2.

8.3.4 The TRANSITIONAL SERVICES AGREEMENT, executed by BUYER.

8.3.4. The NON-COMPETITION AGREEMENT, executed by BUYER.

ARTICLE IX - MISCELLANEOUS

9.1 Further Assurance. At any time and from time to time after the CLOSING, WCI shall, upon the request and at the expense of BUYER, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged or delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney or assurances as may be required for the better assigning, transferring, granting, conveying, assuring and confirming to BUYER, or for aiding and assisting in the collection of or reducing to possession by BUYER, any of the ACQUIRED ASSETS or the SHARES.

9.2 Expenses. Except as otherwise provided herein, WCI and BUYER each shall bear their own expenses incurred in connection with this Agreement and the transactions contemplated herein, whether or not such transactions shall be consummated, including, without limitation, all fees of its counsel, actuaries and accountants.

9.3 Notices. All notices, requests and other communications hereunder shall be in writing and shall be deemed to have been fully given by the parties if addressed and delivered by hand or facsimile and confirmed by certified U.S. mail, with postage prepaid, to the addresses set forth below in this Section 9.3 for the parties (or to such other addresses as may be given by written notice in accordance with this Section 9.3).

If to WCI, to:
White Consolidated Industries, Inc.
11770 Berea Road
Cleveland, Ohio 44111
Attn: Legal Department
Facsimile: 216/252-8158

If to BUYER, to:

Clark Equipment Company
100 North Michigan Street
South Bend, Indiana
Attn: General Counsel
Facsimile: (219) 239-0237

9.4 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of all of the parties hereto, but shall not be assignable by either party without the prior written consent of the other, except that each of WCI and BUYER may engage in

statutory mergers where it is the surviving company, and WCI may assign all or any part of its rights under this Agreement to any parent, affiliated or related company of WCI, provided that WCI shall remain primarily liable for all its obligations under this Agreement. Notwithstanding the foregoing, BUYER may at any time at or before the CLOSING designate one or more of its direct or indirect subsidiaries to acquire all or a portion of the SHARES and/or BKL ACQUIRED ASSETS or to assume all or a portion of the obligations or rights of BUYER hereunder; provided that such designation shall not relieve BUYER of any obligations expressly assumed by it hereunder.

9.5 Bulk Sales. BUYER hereby waives compliance by WCI with the provisions of the so-called bulk sales law of any jurisdiction, if and to the extent any such law may be held to apply to the transactions contemplated hereby, and WCI shall indemnify BUYER for any claim or liability on account of noncompliance with any such bulk sales laws.

9.6 Taxes. BUYER and WCI shall each pay one-half of any sales or other use, stamp, excise or transfer taxes (including those pertaining to the transfer of the REAL PROPERTIES) imposed by law in connection with the sales made to BUYER or its designee pursuant to this Agreement.

9.7 Severability. If any Section, Subsection, clause or provision of this Agreement shall be unenforceable, then such Section, Subsection, clause or provision shall be deemed to be deleted from this Agreement but every other Section, Subsection, clause and provision shall continue in full force and effect.

9.8 Complete Agreement. This Agreement, the SCHEDULE, the Exhibits hereto, the waiver dated as of the date hereof between the parties hereto, the WCI LETTER (as defined in Section 4.1.3(a)), and the other documents and certificates delivered pursuant to the terms hereof set forth the entire understanding of the parties hereto with respect to the subject matters covered hereby and thereby and supersede all prior agreements, covenants, arrangements, communications, representations or warranties, whether verbal or written, by any officer, employee or representative of either party with respect to such subject matters.

9.9 Amendment and Termination. This Agreement may not be amended or terminated verbally, but only as expressly provided herein or by an instrument in writing duly executed by the parties hereto.

9.10 Brokers and Finders. Except as disclosed in Part 9.10 of the Schedule, WCI and BUYER each represents to the other that it has not dealt with, incurred any obligation or entered into any agreement with any person which might result in an obligation of the other party to pay a sales or brokerage commission or finder's fee in connection with the transactions dealt with and covered by this Agreement. Each party shall indemnify and hold harmless the other from any claim or demand for commission or other compensation by any broker, finder or similar agent

claiming to have been employed by or on behalf of such party or arising out of a breach of the foregoing representation.

9.11 Waivers. Waiver by WCI or BUYER of any breach of or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

9.12 Survival of Representations, Warranties, Covenants, Etc.

9.12.1 All of the representations and warranties of WCI and BUYER contained herein and in the certificates or documents delivered in connection herewith shall survive for a period of three (3) years after the CLOSING.

9.12.2 The covenants, agreements and obligations of the parties in this Agreement and in the documents delivered in connection herewith shall survive the CLOSING.

9.13 Applicable Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of New York.

9.14 Headings. The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

9.15 Counterparts. More than one counterpart of this Agreement may be executed by the parties hereto, and each fully executed counterpart shall be deemed an original.

9.16 Third Party Beneficiaries. Each party hereto intends that this Agreement shall not inure to the benefit or create any right or cause of action in or on behalf of any person or entity, other than (a) the parties hereto, (b) their respective successors, assigns and designees to the extent set forth in Section 9.4, and (c) the indemnified persons described in Section 3.3.

9.17 Affiliates. Except as otherwise expressly set forth in this Agreement, an "affiliate" of, or a person or entity "affiliated" with, a specified person or entity, shall mean a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

9.18 Draft SCHEDULE. For purposes of Section 7.1.14 above, the parties acknowledge that by attaching the draft SCHEDULE to this Agreement, BUYER shall not be deemed to have accepted such SCHEDULE or any item identified therein, it being understood that the final SCHEDULE must be reasonably acceptable to BUYER.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

WHITE CONSOLIDATED INDUSTRIES, INC.

By: /s/Daniel R. Elliott
Title:

CLARK EQUIPMENT COMPANY

By: /s/ Bernard D. Henely
Title:

Attachment C

EXECUTION COPY

ASSET AND STOCK PURCHASE AGREEMENT

among

INGERSOLL-RAND COMPANY LIMITED

ON BEHALF OF ITSELF AND THE OTHER SELLERS NAMED HEREIN

and

AB VOLVO (PUBL)

ON BEHALF OF ITSELF AND THE OTHER BUYERS NAMED HEREIN

dated as of February 27, 2007

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ASSET AND STOCK PURCHASE AGREEMENT

This ASSET AND STOCK PURCHASE AGREEMENT, dated as of February 27, 2007, among INGERSOLL-RAND COMPANY LIMITED, a company organized under the Laws of Bermuda ("IR"), on behalf of itself and on behalf of its Affiliates who sell Acquired Assets pursuant to this Agreement (the "Asset Sellers") and on behalf of its Affiliates who sell Sold Shares pursuant to this Agreement (the "Stock Sellers", IR, the Asset Sellers and the Stock Sellers are collectively referred to as the "Sellers"), and AB VOLVO (PUBL), a company organized under the Laws of Sweden ("Buyer Parent"), on behalf of itself and on behalf of its Affiliates who purchase Sold Shares pursuant to this Agreement (the "Stock Buyers") and on behalf of its Affiliates who purchase Acquired Assets pursuant to this Agreement (the "Asset Buyers"; and collectively with Buyer Parent and the Stock Buyers, the "Buyers").

WHEREAS, the Asset Sellers own or will own all of the Acquired Assets, and the Stock Sellers own or will own all of the issued and outstanding shares of capital stock (the "Sold Shares") of the companies identified on Schedule 3.3 (together with the Subsidiaries of such companies as shown on Schedule 3.3, the "Sold Companies");

WHEREAS, the Sellers desire to sell, and the Buyers desire to purchase, the Business, including the Acquired Assets and the Sold Shares, as a going concern, by means of the sale and purchase of the Acquired Assets and Sold Shares, on the terms and subject to the limitations and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements herein contained and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Agreement" shall mean this Asset and Stock Purchase Agreement among the parties hereto (including the Exhibits and Schedules attached hereto), as amended, modified or supplemented from time to time.

"Asset Buyers" shall have the meaning given in the preamble to this Agreement. The Asset Buyers identified at the date of this Agreement are set forth on Exhibit A. Exhibit A shall be updated from time to time as, when and if additional Asset Buyers are identified.

"Asset Sellers" shall have the meaning given in the preamble to this Agreement. The Asset Sellers identified at the date of this Agreement are set forth on Exhibit A. Exhibit A shall be updated from time to time as, when and if additional Asset Sellers are identified.

"Assignment and Assumption of Patents" shall mean an assignment and assumption of patents and patent applications, to be dated as of the Closing Date, in a form to be mutually agreed by the Buyers and the Sellers, and sufficient for purposes of recordation with the United States Patent and Trademark Office, and similar offices in other relevant jurisdictions.

"Assignment and Assumption of Trademarks" shall mean an assignment and assumption of registered trademarks and trademark applications to be dated as of the Closing Date, in a form to be mutually agreed by the Buyers and the Sellers, and sufficient for purposes of recordation with the United States Patent and Trademark Office, and similar offices in other relevant jurisdictions.

"Base Statement of Net Asset Value" shall mean the statement of net asset value of the Business as set forth on Schedule 1.1.

"Books and Records" shall mean files, documents, papers, and other books and records pertaining to the Business, regardless of the manner or form (for example, as paper files or computer files) in which such files, documents, papers and other books and records exist or are maintained.

"Business" shall mean the business of the Road Development segment of Sellers and their Affiliates, as conducted on the date of this Agreement and including, without limitation (i) the IRES Stores and (ii) the following road development product offerings: soil and asphalt compactors, small and large pavers, milling machines, smooth drums, padfoot drums, rollers, screeds, variable reach equipment, rough terrain straight mast equipment, material transfer vehicles, road wideners and hot tack units. For clarification, it is understood that the Business does not include the business activities of any Sold Company or any Asset Seller other than their Road Development or IRES Store segments, all of which other Assets and business activities and all Liabilities related thereto, shall be transferred by each Sold Company to other IR companies prior to the Closing, or retained by each Asset Seller, as the case may be, and in all cases subject to the definitions of "Acquired Assets", "Excluded Assets", "Assumed Liabilities" and "Excluded Liabilities".

"Business Day" shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in The City of New York.

"Business Employee" shall mean each employee of Sellers or any Sold Company employed exclusively or primarily in the Business as of the Closing Date and who is listed on Schedule 1.2, which Schedule shall identify the employer of each such individual, as updated pursuant to Section 5.9(n).

"Cash" shall mean the sum of cash, cash equivalents and liquid investments (plus all uncollected bank deposits and less all outstanding checks) of the Business.

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Company Material Adverse Effect" shall mean any change, occurrence or development that has a material and adverse effect on the business, results of operations or financial condition of the Business, taken as a whole, but shall exclude any effects resulting from or relating to (i) events affecting the United States, European, Asian or global economy or capital or financial markets generally; (ii) changes in conditions in the industries in which the Business or its customers conduct business, (iii) changes in Law or U.S. GAAP, or in the authoritative interpretations thereof, or (iv) earthquakes or similar catastrophes, or acts of war (whether declared or undeclared), sabotage, terrorism, military action or any escalation or worsening thereof; (v) the announcement or performance of this Agreement or the transactions contemplated hereby; (vi) any actions required under this Agreement or required in order to obtain any waiver or Consent from any Person or Governmental Authority, or (vii) any actions to which Buyer has consented or agreed pursuant to this Agreement; provided however that such exclusion shall only apply to the extent any such change described in (i), (ii), and (iii) is not specifically related to or disproportionately impacts the Business, the Sold Companies, the Sold Shares or the Acquired Assets.

"Confidentiality Agreement" shall mean the confidentiality letter agreement dated November 14, 2006 between AB Volvo (publ) and IR.

"Consents" shall mean consents, approvals, authorizations, permits, clearances, exemptions, notices or the expiration or termination of any prescribed waiting period.

"control" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

"Encumbrance" shall mean, with respect to any Asset, any lien, mortgage, pledge, hypothecation, encroachment, easement, use restriction, right-of-way, title defect, charge, attachment, levy, option to purchase or other rights to acquire an interest, rights of first refusal or security interest thereupon or in respect thereof.

"Environmental Claim" shall mean any written notice, claim, demand, action, suit, complaint or proceeding by any Person alleging Liability or potential Liability (including Liability or potential Liability for investigatory costs, cleanup costs, governmental response costs, natural resource damages, fines or penalties) under any Environmental Laws, or concerning the Release of or human exposure to Hazardous Materials.

"Environmental Laws" shall mean all Laws in effect at the date of this Agreement relating to pollution or protection of the environment, including, but not limited to, any Liability for or obligation to remediate, investigate or respond to any contamination or alleged

contamination, or, to the extent relating to the Release of or human exposure to Hazardous Materials, to human health or safety.

"Equipment" shall mean furniture, trade fixtures, furnishings, machinery, vehicles, equipment and other tangible personal property and interests therein of the Sellers for use in the Business), but excluding Books and Records and Inventory.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any entity which is (or at any relevant time was) a member of a "controlled group of corporations" with, under "common control" with, or otherwise required to be aggregated with, any Sellers or any Sold Company, as set forth in Sections 414(b), (c) and (o) of the Code.

"Former Employee" shall mean, as of immediately prior to the Closing, each former employee of any of the Sellers or any Sold Company who, as of the time of such individual's termination of employment with such Seller or such Sold Company, was exclusively employed in the Business.

"Governmental Antitrust Authority" shall mean any Governmental Authority with regulatory jurisdiction over any Consent required for the consummation of the transactions contemplated by this Agreement, under the HSR Act or under Other Competition Laws.

"Governmental Authority" shall mean the government of any sovereign nation or of any state, province, territory, county, municipality or locality, and any governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial body, in each case acting for, with or by empowerment of such government.

"Hazardous Materials" shall mean all wastes, substances or materials defined as "hazardous substances" or "hazardous wastes," or any other term of similar import under, or otherwise regulated pursuant to, any Environmental Law, including petroleum (including crude oil or any fraction thereof), friable asbestos, and polychlorinated biphenyls.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Indebtedness" shall mean, with respect to any Person, without duplication, (i) all obligations of such Person for borrowed money, or with respect to deposits or advances of any kind (other than advances received from customers in the ordinary course of business consistent with past practice of such Person), (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person upon which interest is charged (other than trade payables incurred in the ordinary course of business consistent with past practice of such Person), (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, Inventory, services and supplies incurred in the ordinary course of such Person's business), (vi) all lease obligations of such

Person capitalized on the books and records of such Person, (vii) all obligations of others secured by an Encumbrance on property or Assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (viii) all obligations of such Person under interest rate or currency hedging transactions (valued at the termination value thereof) (other than forward or spot foreign currency exchange Contracts entered into in the ordinary course of business consistent with past practice), (ix) all letters of credit issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the ordinary course of business) and (x) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person.

"Intellectual Property" shall mean all United States, state, and foreign intellectual property and proprietary rights, including, without limitation, all (i) inventions, all improvements thereto, and all patents, patent applications, utility models, utility model applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, divisions, revisions, extensions and reexaminations thereof; (ii) trademarks, trade names, brand names, domain names, service marks, trade dress, logos, and other source indicators, including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (iii) works of authorship, copyrightable works, mask works, designs, copyrights, websites, web page content, and all applications, registrations, and renewals in connection therewith; (iv) processes, formulae, software, databases, know-how, trade secrets, and other confidential business and technical information; (v) other proprietary technology or intellectual property rights, (vi) copies and tangible embodiments thereof, (vii) the right to sue for past, present, or future infringement, misappropriation, or dilution of any of the foregoing, and (viii) all other rights accruing thereunder or pertaining thereto.

"Intellectual Property Agreement" shall mean an agreement between the Sellers and the Buyers, (i) assigning the Assigned Intellectual Property (other than Excluded Assets) to the Buyers and (ii) granting the Buyers and their controlled Affiliates a non-exclusive, worldwide, perpetual, irrevocable, fully-paid up, royalty-free license under the Seller Licensed Intellectual Property, substantially in the form of Exhibit D.

"Inventory" shall mean raw materials, work in progress, goods consigned by the Sellers, finished goods, parts, packaging and labels (including, without limitation, any of the foregoing held for the benefit of the Business in the possession of third party manufacturers, suppliers, dealers or others in transit).

"Investments" means partnership interests or any other equity interest in any corporation, limited liability company, partnership, joint venture, trust or other business association.

"IR Germany" means ABG Allgemeine Baumaschinen Gesellschaft mbH, a corporation organized under the Laws of Germany.

"IR India" means Ingersoll-Rand (India) Limited, a corporation organized under the laws of India.

"IRES Stores" means the 20 Ingersoll-Rand Company Equipment Stores listed on Schedule 1.2A (including the working capital and fixed Assets relating thereto) and the IRES headquarters functions and employees in Annandale, New Jersey.

"IRS" shall mean the U.S. Internal Revenue Service.

"Knowledge of the Sellers" shall mean the actual knowledge (without independent inquiry) of the individuals listed on Schedule 1.3.

"Law" shall mean any statute, law, ordinance, regulation, rule or Order of any Governmental Authority.

"Leased Real Property" shall mean all right, title and interest of Sellers in and to any parcel of real property primarily used or primarily held for use in the Business, together with all easements, rights of way, reservations, privileges, appurtenances and other estates and rights pertaining thereto, held by Sellers or Sold Companies, whether as landlord, tenant, subtenant or pursuant to any other occupancy arrangement pursuant to a lease, sublease, license or other written agreement.

"Modified GAAP" shall mean U.S. GAAP as in effect from time to time, as applied by IR, on a combined basis for the entire Business, subject to the IR accounting principles, procedures, exceptions and modifications set forth in Schedule 1.4.

"Net Asset Value Base Amount" shall mean the net asset value as set forth in the Base Statement of Net Asset Value.

"Order" shall mean any order, judgment, writ, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority or arbitration tribunal.

"Other Competition Laws" shall mean all non-U.S. Laws intended to prohibit, restrict or regulate actions having an anticompetitive effect or purposes, including, but not limited to, competition, restraint of trade, anti-monopolization, merger control or antitrust Laws.

"Owned Real Property" shall mean those parcels of real property owned by Sellers and Sold Companies, including, but not limited to, those located in Shippensburg, Pennsylvania USA, Letterkenny, Pennsylvania USA, Hameln, Germany, Bangalore, India and Wuxi, China, that are primarily used or primarily held for use in the Business (all of which are listed on Schedule 3.18(a)), including any buildings, structures and improvements located on any such real property and all fixtures attached thereto and all easements, rights of way, reservations, privileges, appurtenances and other estates, interests and rights pertaining thereto.

"Permitted Encumbrances" shall mean (i) Encumbrances for Taxes not yet due and payable, or being contested in good faith by appropriate proceedings and for which appropriate reserves have been established, (ii) Encumbrances in respect of Assets imposed by Law that were incurred in the ordinary course of business, such as carriers', warehousemen's, materialmen's and mechanics' liens and other similar liens, (iii) pledges or deposits made in the ordinary course of business to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations, (iv) Encumbrances that will be released

and, as appropriate, removed of record, at or prior to Closing in accordance with the terms of this Agreement and (v) in addition with respect to the Real Property, (A) reciprocal easement agreements, utility easements and other customary encumbrances on title, (B) zoning, ordinances, building codes, regulations and enactments of any governmental or administrative agency having jurisdiction over the Real Property, and (C) any conditions that would be shown by a current (as of the date of this Agreement) and accurate survey or personal inspection of the Real Property, provided that such matters described in clauses (A) through (C) do not, individually or in the aggregate, materially impair the present use of the Real Property in the operation of the Business, or the value of the Real Property, affected thereby.

"Person" shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization, joint venture, limited liability company or other entity.

"Pre-Closing Period" shall mean the period from and after the date of this Agreement and until the earlier of (x) the termination of this Agreement or (y) the close of business local time in each applicable jurisdiction on the Closing Date.

"Real Estate Leases" shall mean, collectively, each lease, sublease, license and other agreement pursuant to which any Seller or Sold Company is granted the right to use or occupy, now or in the future, the Leased Real Property or any portion thereof, including any and all modifications, amendments and supplements thereto and any assignments thereof.

"Real Property" shall mean, collectively, the Owned Real Property and the Leased Real Property.

"Release" shall have the meaning provided in 42 U.S.C. Section 9601(22).

"Rental Equipment" shall mean equipment that is designated on the Books and Records of the Business as owned by the Sellers and intended for rent to third parties.

"Road Sales & Service Agreements" shall mean all those Contracts, which are listed on Schedule 3.15(a), but excluding any Shared Sales & Service Agreements listed on Schedule 1.5, pursuant to which a distributor, dealer or sales agent buys, sells, leases, rents or otherwise distributes solely products of the Business.

"Seller Licensed Intellectual Property" shall mean all Intellectual Property that constitutes Excluded Assets, but which is used or held for use in the Business as of the Closing Date, other than the "Ingersoll-Rand" brand name, the "IR" logotype, and the IR trademark.

"Shared Sales & Service Agreements" shall mean those Contracts described on Schedule 1.5 pursuant to which a distributor, dealer or sales agent buys, sells, leases, rents or otherwise distributes both products of the Business and products of other business of the Sellers or their Affiliates.

"Stock Buyers" shall have the meaning given in the preamble to this Agreement. The Stock Buyers identified at the date of this Agreement are set forth on Exhibit A. Exhibit A shall be updated from time-to-time as, when and if, additional Stock Buyers are identified.

"Stock Sellers" shall have the meaning given in the preamble to this Agreement. The Stock Sellers identified at the date of this Agreement are set forth on Exhibit A. Exhibit A shall be updated from time-to-time as, when and if, additional Stock Sellers are identified.

"Subsidiaries" shall mean, with respect to any Person, any and all corporations, partnerships, limited liability companies and other entities with respect to which such Person, directly or indirectly, owns more than 50% of the securities having the power to elect members of the board of directors or similar body governing the affairs of such entity.

"Supply Agreement – India" shall mean the contract manufacturing agreement between IR or one of its Affiliates and Buyers, for the manufacture and sale of Ingersoll Rand products manufactured in Bangalore to IR or its Affiliates after the Closing, substantially on the terms attached hereto as Exhibit B, or such other terms as the parties may mutually agree.

"Tax" or "Taxes" shall mean (i) any taxes of any kind or nature, levies or like assessments, imposts, charges or fees, including but not limited to those measured on, measured by or referred to as, income, alternative or add-on minimum, gross income, gross receipts, capital, capital gains, sales, use, *ad valorem*, franchise, profits or excess profits, transfer, withholding, payroll, employment, social, excise, severance, stamp, value added, real or personal property or windfall profits taxes, assessments or charges of any kind whatsoever (whether computed on a separate or consolidated, unitary or combined basis, or in any other manner), together with any interest and any penalties, additions to tax or additional amounts imposed by any Taxing Authority in any Tax jurisdiction and (ii) Liability for the payment of any amounts described in clause (i) as a result of an express or implied obligation to indemnify any other Person with respect to the payment of any such amounts or under Treasury Regulation Section 1.1502-6 (or similar provision of state or non-United States Law), as a result of successor or transferee liability, or as a result of being a member of an affiliated, combined, consolidated or unitary group.

"Tax Return" shall mean any return, report or statement required to be filed with any Taxing Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

"Taxing Authority" shall mean, with respect to any Tax, the Governmental Authority or political subdivision thereof or any transnational or supranational authority that imposes such Tax or is charged with the collection of such Tax.

"Transfer Taxes" shall mean any Liability for transfer, documentary, sales, use, registration, value-added and other similar Taxes (including all applicable real estate transfer Taxes) and related amounts (including any penalties, interest and additions to Tax).

"Transition Services Agreement" shall mean the agreement for the provision of transition services substantially in the form attached as Exhibit C hereto.

"U.S. GAAP" shall mean United States generally accepted accounting principles and practices.

SECTION 1.2. Other Interpretive Provisions. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole (including the Schedules and Exhibits hereto) and not to any particular provision of this Agreement, and all Article, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to "dollars" or "$" shall be deemed references to the lawful money of the United States of America.

ARTICLE II

PURCHASE AND SALE OF ASSETS AND SHARES

SECTION 2.1. Transfers of Assets and Shares by the Sellers.

(a) Subject to the terms and conditions set forth in this Agreement, the Asset Sellers shall sell or transfer the Acquired Assets held by the Asset Sellers to the Asset Buyers or one or more of their designated Affiliates, and the Asset Buyers shall purchase such Acquired Assets from the Asset Sellers, in accordance with Exhibit A. The Asset Buyers shall acquire, and the Asset Sellers shall transfer, or cause to be transferred, such Acquired Assets free and clear of all Liabilities of any Asset Seller or any of its Affiliates, other than the Assumed Liabilities, and free and clear of all Encumbrances other than Permitted Encumbrances.

(b) As used in this Agreement, the term "Acquired Assets" shall mean all assets, property, rights, title, interests and privileges (collectively, "Assets") that are primarily used or primarily held for use in the Business as a going concern as of the Closing Date (including, for the avoidance of doubt, all Assets of the Sold Companies and the Asset Sellers primarily used or primarily held for use in the Business as a going concern as of the Closing Date), including all of the following items as they exist as of the Closing Date, but expressly excluding the Excluded Assets:

(i) all right, title and interest in and to the Owned Real Property;

(ii) all right, title and interest in and to the Leased Real Property, pursuant to the Real Estate Leases;

(iii) all right, title and interests in any Intellectual Property primarily used or primarily held for use in the Business ("Assigned Intellectual Property");

(iv) all right, title and interest in, to and under each contract, lease, license, indenture, agreement, understanding and commitment, whether oral or written ("Contracts"), to which an Asset Seller or a Sold Company is party and which is primarily used or primarily held for use in the Business, including, but not limited to, Road Sales & Service Agreements, but excluding (x) all U.S. Company Group Plans except to the extent of assets thereof transferred to Buyers' Plans pursuant to Section 5.9, (y) Contracts relating to employment and employee benefits and similar arrangements

with independent contractors excluded under Section 5.9 and (z) the Shared Sales & Service Agreements (collectively, the "Acquired Contracts");

(v) all Books and Records of the Sold Companies and all other Books and Records of the Asset Sellers primarily used or primarily held for use in the Business;

(vi) to the extent transferable in accordance with applicable Law, all right, title and interest in and to Permits primarily used or primarily held for use in the Business;

(vii) all Equipment, Inventory and Rental Equipment that is primarily used or primarily held for use in the Business;

(viii) (A) all computer and automatic machinery, servers, network equipment and connections primarily used or primarily held for use in the Business, and (B) all software, program documentation, tapes, manuals, forms, guides and other materials with respect thereto, and related licenses and other agreements that are exclusively used in the Business;

(ix) all accounts and notes receivable ("Receivables"), deferred charges, chattel paper, refunds, credits, allowances, rebates, other rights to receive payments arising out of or primarily relating to the Business, any Acquired Asset or any Assumed Liability, in each case as reflected in the Final Statement of Net Asset Value;

(x) all Assets included on the Final Statement of Net Asset Value;

(xi) all rights, claims and credits to the extent arising out of or primarily relating to the Business, any Acquired Asset or any Assumed Liability, including claims in bankruptcy, and any such items arising under guarantees, warranties, offsets, indemnities and all other intangible property rights or claims and similar rights in favor of any Asset Seller or any Sold Company arising out of or primarily relating to the Business, any Acquired Asset or any Assumed Liability;

(xii) all current and historical sales and promotional material and literature primarily used or primarily held for use in the Business, including samples, premium and promotional items, pamphlets and brochures, historical and current television, radio, internet and other media advertising, historical and current print advertising and all artwork relating to sales and promotional literature;

(xiii) all rights in and to products sold, rented, or leased (including products returned after the Closing and rights of rescission, replevin and reclamation) in the operation of the Business arising out of or primarily relating to the Business, any Acquired Asset or any Assumed Liability;

(xiv) all warranties from third party manufacturers and suppliers in favor of IR and its Affiliates, to the extent related to the Business;

(xv) all information relating to customers of the Business, including customer lists, prospective customer lists, after sales documents and records, service and maintenance documents and records and all relevant correspondence;

(xvi) all (A) Cash of the Sold Companies and (B) Cash of the Asset Sellers, to the extent such cash represents collateral, security deposits, or other restricted pools of funds associated with Acquired Assets; and

(xvii) all goodwill of the Asset Sellers, Sold Companies or their Affiliates associated with the Acquired Assets, the Assumed Liabilities and the Business.

(c) As used in this Agreement, the term "Excluded Assets" shall mean all Assets not primarily used or primarily held for use in the Business as a going concern as of the Closing Date (including, for the avoidance of doubt, all Assets of the Sold Companies and the Asset Sellers not primarily used or primarily held for use in the Business as a going concern as of the Closing Date), including all of the following items as they exist as of the Closing Date (except to the extent that any of the same are included on the Balance Sheet and/or included on the Final Statement of Net Asset Value), but expressly excluding the Acquired Assets:

(i) unless otherwise required by applicable Law in respect of the Sold Companies, any intercompany accounts receivable from Sellers or their Subsidiaries as of the Closing Date;

(ii) all rights of Sellers and their Affiliates under this Agreement, the Closing Agreements and any other documents, instruments or certificates executed in connection with this Agreement and the transactions contemplated hereby;

(iii) Intellectual Property in and to the "Ingersoll-Rand" brand name, the "IR" logotype, the IR trademark and any other Intellectual Property of Sellers and their Affiliates not primarily used or primarily held for use in the Business;

(iv) except as specifically contemplated in Section 5.9, all properties and Assets of any U.S. Company Group Plans;

(v) Cash (except for Cash as set forth in Section 2.1(b)(xvi));

(vi) any interest bearing securities held by the Sellers or the Sold Companies as of the Closing Date;

(vii) the corporate charters, minutes and stock record books and corporate seals of each Asset Seller;

(viii) any capital stock of or any equity interest in any Person other than the Sold Companies;

(ix) all rights, claims and credits to the extent arising out of or primarily relating to any Excluded Asset or any Excluded Liability, including claims in bankruptcy, and any such items arising under guarantees, warranties, offsets, indemnities

and all other intangible property rights or claims and similar rights in favor of any Asset Seller or any of its Affiliates arising out of or primarily relating to any Excluded Asset or any Excluded Liability; and

(x) all Shared Sales & Service Agreements.

(d) On the Closing Date and subject to the terms and conditions set forth in this Agreement, the Stock Sellers will sell, convey, assign and transfer to the Stock Buyers, and the Stock Buyers will purchase and acquire, all of such Stock Sellers' right, title and interest in and to the Sold Shares in accordance with Exhibit A, free and clear of all Encumbrances other than such as may be created by or on behalf of the Buyers.

(e) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Asset or any claim or right or any benefit arising under or resulting from such Asset if an attempted assignment thereof, without the Consent of a third party, would constitute a breach or other contravention of the rights of such third party, would be ineffective with respect to any party to an agreement concerning such Asset, or would materially and adversely affect the rights of any Asset Seller or, upon transfer, any Asset Buyer under such Asset. If any transfer or assignment by any Asset Seller to, or any assumption by any Asset Buyer of, any interest in, or Liability under, any Asset requires the Consent of a third party, then, if permitted, such assignment or assumption shall be made subject to such Consent being obtained. Without limiting the Sellers' obligations hereunder, including under Section 5.4, if any such Consent is not obtained prior to the Closing, the Asset Sellers, on the one hand, and the Asset Buyers, on the other, shall cooperate with one another in structuring and documenting any lawful and reasonable arrangement under which the Asset Buyers shall obtain the economic benefits of the Asset, claim or right with respect to which the Consent has not been obtained in accordance with this Agreement. Such reasonable arrangement may include (i) the subcontracting, sublicensing or subleasing to an Asset Buyer of any and all rights of the Asset Sellers against the other party to such third-party agreement and (ii) the enforcement by the Asset Sellers of such rights in respect of such Asset.

(f) The parties agree that the list of Asset Sellers may be amended by the Sellers from time to time prior to the Closing, as may be necessary in order to ensure the accurate and complete conveyance of the Business to the Buyers, as long as the Sellers notify the Buyers of such changes at least 5 Business Days prior to the Closing. In addition, at the sole election of the Sellers, Blaw-Knox Construction Equipment Corporation, Blaw-Knox Company and Blackrod Europe Limited (or any of them) may instead be transferred to Buyers through a sale of Assets and assignment of Liabilities, as long as the Sellers have notified the Buyers of such decision at least 5 Business Days prior to the Closing. The parties agree that the list of Asset Buyers and Stock Buyers may be amended by the Buyers from time to time prior to the Closing, as long as all Buyers are wholly-owned Subsidiaries (direct or indirect) of Buyer Parent, and as long as the Buyers notify the Sellers of such changes at least 5 Business Days prior to the Closing.

(g) Wherever required or appropriate under local laws and practices, the applicable Buyers and Sellers shall enter into appropriate local transfer agreements, governed by local laws, for the transfer of the relevant Assets or Sold Shares. Buyers and Sellers shall

cooperate in good faith in the identification of all such local requirements and the preparation of such transfer agreements. With respect to the Sold Shares in IR Germany, the Stock Buyers and Ingersoll-Rand Beteiligungs GmbH as Parent of IR Germany shall enter into a separate, German language, Sale and Purchase Agreement (German SPA) which shall be notarized before a notary public. With respect to India, it is the intention of the parties, if permitted by applicable law and if done in a manner favorable, or at least neutral, for all parties, to sell or transfer the Business as a going concern relatable to the Business for a lump sum purchase price without assigning specific values to individual assets or liabilities. Consistent with the terms of this Agreement, the Sellers and the Buyers shall enter into a separate "Business Transfer Agreement" to meet the local requirements in India.

SECTION 2.2. Assumption of Liabilities by Buyers.

(a) On the Closing Date and subject to the terms and conditions set forth in this Agreement, the Asset Buyers shall expressly assume, and agree to pay or otherwise perform or discharge, the Assumed Liabilities to be transferred to such Asset Buyers.

(b) As used in this Agreement, the term "Assumed Liabilities" shall mean, except as otherwise provided herein, all liabilities, obligations, claims, demands, expenses, damages or responsibilities, whether express or implied, known or unknown, liquidated or unliquidated, absolute, accrued, contingent or otherwise and whether due or to become due (collectively, "Liabilities") to the extent arising out of, in respect of or relating to the Business or the Acquired Assets before, on or after the Closing Date (including, for the avoidance of doubt, all Liabilities of the Sold Companies and the Asset Sellers to the extent arising out of, in respect of or relating to the Business or the Acquired Assets before, on or after the Closing Date), including the following but expressly excluding the Excluded Liabilities:

(i) all Liabilities of any Seller under the Acquired Contracts, including without limitation, any Liabilities arising out of or relating to the assignment to any Buyer of any Road Sales & Service Agreements included in the Acquired Contracts;

(ii) all Liabilities of any Seller or Sold Company, as lessee, under each of the Real Estate Leases;

(iii) all Liabilities payable to trade creditors of the Business (other than intercompany accounts payable to Sellers and their Affiliates);

(iv) all Liabilities of Sold Companies and the Asset Sellers relating to Indebtedness to the extent not paid off prior to Closing;

(v) all Liabilities of any Seller or any of their Affiliates in respect of any adverse claims, disputes, Proceedings, investigations or inquiries (asserted, instituted or rendered, or otherwise existing or occurring at, or any time after, the Closing Date) arising out of, relating to or otherwise in respect of, (x) any and all goods sold or supplied, or services or other work performed, by the Business before, on or after the Closing Date, or (y) the Acquired Assets or the Business, or the existence, ownership, possession, operation, conduct or condition thereof (whether by the Sellers or any other Person) before, on or after the Closing Date. However, with respect to Liabilities arising

under clause (x) above in respect of pending and threatened adverse claims, disputes, Proceedings, investigations or inquiries in existence as of the Closing Date, the Sellers will use commercially reasonable efforts (excluding, however, any obligation to pay additional fees, premiums or other amounts to the extent the Buyers do not agree in writing to promptly reimburse such additional fees, premiums or other amounts) to (A) continue after the Closing any existing insurance coverage that may be provided by the Sellers' third-party insurance policies for such Liabilities, and (B) make available to Buyers any proceeds from such insurance that may be paid out to Sellers by the relevant insurers. For the avoidance of doubt, if any deductible, retention or other self-insured amount must be paid before third-party insurance proceeds are available, such deductible, retention or other self-insured amount shall be paid solely by the Buyers;

(vi) all Liabilities to the customers of the Business for goods sold or supplied on or prior to the Closing Date by the Business, based on express or implied warranties of the Business;

(vii) all Liabilities for Taxes, whether or not accrued, assessed or currently due and payable, relating to the operation or ownership of the Business (including for clarification the Sold Companies and the Acquired Assets), for any period (or portion thereof in the case of a Straddle Period) ending on or prior to the Closing Date (but only for the Taxes identified on the Final Statement of Net Asset Value and only to the extent of the amounts reflected on such Final Statement of Net Asset Value) and for any period (or portion thereof in the case of a Straddle Period) that begins after the Closing Date;

(viii) all Liabilities relating to or arising out of employment and employee benefits to the extent expressly provided in Section 5.9;

(ix) to the maximum extent permitted by law, all Liabilities of the Sellers and their Affiliates relating to worker compensation insurance, claims and benefits for and by Transferred Employees and past employees of the Business, including, for the avoidance of doubt all statutory or contractual obligations in any jurisdiction to provide similar insurance, compensation or benefits for injured employees;

(x) all Liabilities arising out of, based upon, resulting from or relating to the Acquired Assets or the Business and based upon, relating to, arising out of or resulting from any fact, circumstance, occurrence, condition, act or omission occurring or existing, in whole or in part, after the Closing;

(xi) except as set forth in Section 2.2(c)(vi), all Liabilities, in respect of or relating to the Business and relating to or arising under any Environmental Laws or relating to Hazardous Materials regardless of when incurred and regardless whether any event or condition giving rise to any such Liability occurred or existed as of, or prior to the Closing Date; and

(xii) all other Liabilities (x) reflected as accrued Liabilities on the face of the Balance Sheet of the Business or (y) accrued by any Asset Seller in respect of the

Business after December 31, 2006 (and prior to the Closing Date) which, if they had been accrued by such Asset Seller as of December 31, 2006 would have been so reflected on the face of the Balance Sheet using the same methodology and criteria used in preparing the Balance Sheet, as such accrued Liabilities exist as of the Closing Date.

(c) On the Closing Date and subject to the terms and conditions set forth in this Agreement, the Seller and its Affiliates (but not the Sold Companies) shall expressly retain and agree to pay or otherwise perform or discharge, the Excluded Liabilities. As used in this Agreement, the term "Excluded Liabilities" shall mean, except as otherwise provided herein, all Liabilities to the extent not arising out of, in respect of or relating to the Business or the Acquired Assets before, on or after the Closing Date (including, for the avoidance of doubt, all Liabilities of the Sold Companies and the Asset Sellers to the extent not arising out of, in respect of or relating to the Business or the Acquired Assets), including the following but expressly excluding the Assumed Liabilities:

(i) unless otherwise required by applicable Law in respect of the Sold Companies, any intercompany accounts payable due to Sellers or their Affiliates as of the Closing Date;

(ii) all Liabilities to the extent arising out of, resulting from, relating to or otherwise in respect of (A) any business other than the Business, (B) any Asset other than the Acquired Assets or the existence, ownership, possession, operation, conduct or condition thereof, (C) Contract other than any Acquired Contract (including without limitation all Liabilities under the Shared Sales & Service Agreements that do not relate to or arise out of the Business), in each case before, on or after the Closing Date;

(iii) all Liabilities to the extent they are in respect of, relate primarily to or arise primarily out of any Excluded Asset;

(iv) all Liabilities for Taxes, whether or not accrued, assessed or currently due and payable, relating to the operation or ownership of the Business (including for clarification the Sold Companies and the Acquired Assets) for any period (or portion thereof in the case of a Straddle Period) ending on or prior to the Closing Date, except for Taxes identified on the Final Statement of Net Asset Value but only to the extent of the amounts reflected on such Final Statement of Net Asset Value (for purposes of this clause (iv), all real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to the Business or the Acquired Assets for a taxable period that includes (but does not end on) the Closing Date shall be apportioned in the manner described in Section 5.6(c) hereof);

(v) all Liabilities of the Sellers or their Affiliates or the Business under confidentiality agreements to which any Seller is a party relating to the sale of the Business;

(vi) all Liabilities relating to or arising out of any property or facility previously owned, leased, occupied, used or operated by Seller or any of its Affiliates in

connection with the Business but that is not, immediately prior to the Closing Date, owned, leased, used, occupied or operated by Seller or any of its Affiliates;

(vii) all Liabilities payable to trade creditors arising out of the operation or conduct by a Seller or any of its Affiliates of any business other than the Business;

(viii) all Liabilities relating to or otherwise in respect of the Sellers or their Affiliates or the Business with respect to (A) Company Group Plans, (B) any current employees, consultants and directors of the Business and (C) Former Employees and former consultants and directors of the Business, in each case except to the extent expressly assumed in Section 5.9;

(ix) any Liability of the Sellers or any of their Affiliates to or under any multiemployer plan (as defined in Section 3(37) of ERISA) in connection with any complete or partial withdrawal therefrom arising in connection with or otherwise relating to the consummation of the transactions contemplated under this Agreement;

(x) all Liabilities whatsoever of the Sold Companies which do not relate to the Business; and

(xi) all actions, suits, proceedings, claims, Liabilities, losses, fines, penalties, damages, costs and expenses (including fees and expenses of counsel) and all other Liabilities of any kind that relate to acts or omissions prior to the Closing Date under and pursuant to the Road Sales & Service Agreements or Shared Sales & Service Agreements.

SECTION 2.3. Consideration.

(a) On the Closing Date and subject to the terms and conditions set forth in this Agreement, in consideration of the sale, assignment and transfer of the Sold Shares and the Acquired Assets, the Buyers will pay to the Sellers $1,303,000,000.00 (One Billion Three Hundred Three Million Dollars) by wire transfer of immediately available funds in U.S. dollars, free and clear of any withholdings or other deductions except to the extent required by any U.S., state, local or foreign Laws (subject to the subsequent sentence of this Section 2.3(a)), plus Estimated Cash (the "Initial Purchase Price," and as adjusted pursuant to Section 2.3(b) and Section 2.6, the "Purchase Price"). The parties agree that, to the extent required by applicable Law in any non-U.S. jurisdiction in which Acquired Assets or Sold Shares are being transferred on the Closing Date, the applicable Buyer will pay the applicable Seller the applicable portion of the Initial Purchase Price (as allocated pursuant to Schedule 2.7 or otherwise agreed by the parties) by wire transfer of immediately available funds in local currency, at the then prevailing currency exchange rate as published by the Wall Street Journal on the Business Day prior to the Closing Date.

(b) No later than two Business Days prior to the Closing Date, the Sellers shall deliver to Buyer Parent a good faith estimate of cash on the balance sheets of the Sold Companies as of the Closing Date, net of any Indebtedness of the Sold Companies and Asset Sellers that is an Assumed Liability under Section 2.2(b)(iv) ("Closing Date Cash", and such estimate, the "Estimated Cash"). For the avoidance of doubt, Closing Date Cash and Estimated

Cash can be a negative number. Pursuant to the procedures set forth in Section 2.6 in respect of the Net Asset Value Statement, following the Closing the parties shall calculate and agree upon Closing Date Cash. To the extent Estimated Cash exceeds Closing Date Cash, the applicable Seller shall pay to the applicable Buyer such excess in U.S. dollars at the currency exchange rate in effect on the Closing Date as published by the Wall Street Journal. To the extent Closing Date Cash exceeds Estimated Cash, the applicable Buyer shall pay to the applicable Seller such excess in U.S. dollars at the currency exchange rate in effect on the Closing Date as published by the Wall Street Journal. Such payment shall be made contemporaneously with payments between the parties pursuant to Section 2.6(e).

SECTION 2.4. The Closing.

(a) Unless this Agreement shall have been terminated pursuant to Article VIII, and subject to satisfaction or waiver of the conditions set forth in Articles VI and VII, the closing (the "Closing") of the transactions contemplated by this Agreement shall take place at the offices of Ingersoll-Rand Company, on a day that is at least five Business Days following the satisfaction or waiver of all of the conditions set forth in Articles VI and VII hereof, or at such other place and time as may be agreed upon by IR and Buyer Parent (the date on which the Closing actually occurs is referred to as the "Closing Date"). The parties will use reasonable efforts to schedule the Closing Date for the last day of a calendar month. Unless the parties agree otherwise, the Closing will be deemed to have occurred at the close of business local time in each applicable jurisdiction on the Closing Date.

(b) Deferred Items – Government Approvals.

(i) If, on the Closing Date:

(A) (x) any Seller or applicable Buyer has not obtained any required Consent of a Governmental Authority in India or the People's Republic of China or any shareholder approval in India legally required in order to transfer (directly or indirectly) any Sold Shares or any Acquired Assets (the "Deferred Items"), and (y) all other conditions precedent to the Closing have been satisfied or waived, or

(B) (x) there is in effect any injunction, restraining order or decree of any nature of any Governmental Authority of competent jurisdiction in India or the People's Republic of China or any Law or Order in India or the People's Republic of China that restrains or prohibits the transfer to the applicable Buyer of the Deferred Items that is not permanent or remains appealable (a "Non-Final Injunction"), and (y) all other conditions precedent to the Closing have been satisfied or waived,

such Deferred Items shall be withheld from transfer on the Closing Date, and the closing of such Deferred Item shall be delayed. The Buyer shall not pay the Purchase Price allocable to such Deferred Item (as set forth on Schedule 2.7), until the closing of such Deferred Item (each, a "Deferred Transfer"). Until each Deferred Transfer occurs, the Sellers and the Buyers shall continue to use commercially reasonable efforts to obtain all

such Consents relating to the Deferred Items or the transfer thereof, and/or to cause all Non-Final Injunctions relating to the Deferred Items or the transfer thereof to be lifted.

(ii) From and after the Closing, and until such time as the closing of a Deferred Item has occurred, Sellers shall retain ownership of such Deferred Item and shall operate the Business as it relates to such Deferred Item for the Sellers' sole benefit; provided, however, that Sellers' pre-Closing obligations under this Agreement, including for the avoidance of doubt Section 5.1 hereof, shall continue in force with respect to such Deferred Item until its Deferred Transfer occurs.

(iii) Subject to Section 2.4(b)(iv), the closing of a transfer of each Deferred Item shall be effected on the fifth Business Day after receipt of all applicable legally required Consents and the lifting of all applicable Non-Final Injunctions, or at such other time as the parties may agree.

(iv) At any time on or after the date that is the first anniversary of the Closing Date, so long as Buyer Parent's failure to comply with the last sentence of Section 2.4(b)(i) is not the primary cause of the failure of any Deferred Item to be transferred, Buyer Parent may, by delivery of written notice to IR (each an "Abandonment Notice"), elect to abandon the purchase of the remaining Deferred Items.

SECTION 2.5. Deliveries at the Closing.

(a) At or prior to the Closing, and subject to any local requirements and practices pertaining to the transfer of shares and assets in each jurisdiction, the Asset Sellers shall deliver or cause to be delivered or made available to the Asset Buyers the following:

(i) bills of sale in form reasonably acceptable to the Asset Buyers and Asset Sellers (the "Bills of Sale") and any other deeds, bills of sale, assignments and other instruments of transfer necessary to transfer and assign all right, title and interest of the Sellers in, to and under the Acquired Assets, in each case free and clear of all Encumbrances other than Permitted Encumbrances (exclusive of the Real Property), duly executed by the appropriate Sellers;

(ii) the Assignment and Assumption of Trademarks, the Assignment and Assumption of Patents, each executed by the appropriate Sellers, and any and all documents, agreements, certificates and other instruments as may be necessary to assign the Registered Intellectual Property constituting Acquired Assets to the Buyer and register the same in the name of a Buyer or designee thereof;

(iii) the Intellectual Property Agreement, substantially in the form of Exhibit D;

(iv) with respect to each parcel of Owned Real Property that is owned by an Asset Seller, a duly executed and acknowledged deed (or local legal equivalent), in each case in proper recordable form and sufficient to vest in the Buyer good and marketable title to each such parcel of Owned Real Property, in each case free and clear of all Encumbrances other than Permitted Encumbrances (collectively, the "Deeds"),

together with such affidavits, tax forms, and other documentation as may be required by applicable Law to allow for recordation;

(v) an assignment and assumption agreement relating to each Real Estate Lease held by an Asset Seller, in a form to be mutually agreed by the Buyers and the Sellers (subject to any modifications advisable to comport with local law) (the "Assignment and Assumption of Real Estate Leases");

(vi) from each Asset Seller conveying Real Property located in the United States, an affidavit, sworn to under penalty of perjury, setting forth such Asset Seller's name, address and federal tax identification number and stating that such Asset Seller is not a "foreign person" within the meaning of Section 1445 of the Code;

(vii) to the extent action by its Board of Directors (or equivalent thereof) and/or its shareholders (or equivalent thereof) is required by its respective governing documents, a certificate of the Secretary (or equivalent thereof) of each Asset Seller certifying that the resolutions adopted by its Board of Directors (or the equivalent thereof) and, if applicable, shareholders (or the equivalent thereof) attached thereto, authorizing the execution and delivery by such Asset Seller of this Agreement and the other Closing Agreements to which such Asset Seller is a party, and the performance by such Asset Seller of its obligations hereunder and thereunder, were duly and validly adopted and are in full force and effect; and

(viii) such other instruments and documents, in form and substance reasonably acceptable to Asset Buyers and Asset Sellers, as may be reasonably requested by Asset Buyers to effect the Closing.

(b) At or prior to the Closing, the Stock Sellers shall deliver or cause to be delivered or made available to the Stock Buyers the following:

(i) stock certificates (or local legal equivalent) evidencing the Sold Shares to be sold by such Stock Seller duly endorsed in blank, or accompanied by stock powers duly executed in blank;

(ii) the corporate charters, minutes and stock record books and corporate seals (or local equivalent) of each Sold Company;

(iii) to the extent action by its Board of Directors (or equivalent thereof) and/or its shareholders (or equivalent thereof) is required by its respective governing documents, a certificate of the Secretary (or equivalent thereof) of each Stock Seller certifying that the resolutions adopted by its Board of Directors (or the equivalent thereof) and, if applicable, its shareholders (or the equivalent thereof) attached thereto, authorizing the execution and delivery by such Stock Seller of this Agreement and the other Closing Agreements to which such Stock Seller is a party, and the performance by such Stock Seller of its obligations hereunder and thereunder, were duly and validly adopted and are in full force and effect;

(iv) from the seller of Blaw Knox Construction Equipment Corporation, a certification from Blaw Knox Construction Equipment Corporation dated within 30 days of the Closing Date and in accordance with Treasury Regulation Section 1.1445-2(c) certifying that an interest in Blaw Knox Construction Equipment Corporation is not a United States real property interest because the Company is not and has not been a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code; and

(v) such other instruments and documents, in form and substance reasonably acceptable to the Stock Buyers and Stock Sellers, as may be reasonably requested by the Stock Buyers to effect the Closing.

(c) At or prior to the Closing, the Buyers shall deliver or cause to be delivered to Sellers the following:

(i) the Initial Purchase Price by wire transfer of immediately available funds to an account or accounts designated by Sellers;

(ii) appropriately executed agreements and other documents and instruments providing for the matters described in Sections 2.1 and 2.2, in form and substance reasonably satisfactory to Sellers;

(iii) to the extent action by its Board of Directors (or equivalent thereof) and/or its shareholders (or equivalent thereof) is required by its respective governing documents, a certificate of the Secretary (or equivalent thereof) of each Buyer certifying that, the resolutions adopted by its Board of Directors (or the equivalent thereof) and, if applicable, its shareholders (or the equivalent thereof), attached thereto, authorizing the execution and delivery by such Buyer of this Agreement and the other Closing Agreements to which such Buyer is a party, and the performance by such Buyer of its obligations hereunder and thereunder, were duly and validly adopted and are in full force and effect;

(iv) the Intellectual Property Agreement;

(v) the Assignment and Assumption of Trademarks, the Assignment and Assumption of Patents, and Assignment and Assumption of Real Estate Leases, each in form and substance reasonably satisfactory to Sellers and Buyers and duly executed by the applicable Buyer(s); and

(vi) such other instruments and documents, in form and substance reasonably acceptable to Buyers and Sellers, as may be reasonably requested by the Sellers to effect the Closing.

(d) At or prior to the Closing, the Sellers and the Buyers shall, or shall cause their respective Affiliates to, as applicable, execute and deliver each of the following agreements (collectively, the "Closing Agreements"):

(i) the Transition Services Agreement;

(ii) the Supply Agreement India;

(iii) agreement for the distribution of certain of IR's non-road products at the IRES Stores, substantially on the terms attached hereto as Exhibit E (the "IRES Sales and Service Agreement") or such other terms as the parties may agree; and

(iv) agreement for the provision of services to IR's construction equipment business by the Annandale service center, substantially in the form of the Transition Services Agreement; provided, however, that the term shall be for 12 months. (the "Administrative Services Agreement").

SECTION 2.6. Post-Closing Purchase Price Adjustment.

(a) Within 45 days of the Closing Date, the Buyers shall make available or deliver to the Sellers the final standard trial balances as of the Closing Date and related supplemental schedules for the Acquired Assets, Sold Shares and Assumed Liabilities. Within 45 days after all such materials described in the preceding sentence have been received by Sellers or made available to Sellers, the Sellers will prepare, or cause to be prepared, a statement containing a calculation of the Net Asset Value as of the Closing (the "Net Asset Value Statement"), which shall be prepared in accordance with the definition of Net Asset Value. "Net Asset Value" shall mean the book value of the Acquired Assets (excluding any Excluded Assets) less Assumed Liabilities (excluding any Excluded Liabilities) of the Business, and the book value of the assets and liabilities of the Sold Companies, determined on a combined basis in accordance with Modified GAAP applied on a basis consistent with, and reflecting all categories of adjustments on, the Base Statement of Net Asset Value. The Buyers will assist and cooperate with the Sellers in the preparation of the Net Asset Value Statement, including by providing the Sellers and their accountants access to the Books and Records of the Business and to any other information necessary to prepare the Net Asset Value Statement.

(b) The Buyers shall, within 30 days after the delivery by the Sellers of the Net Asset Value Statement, complete their review of the Net Asset Value Statement. In the event that the Buyers determine that the Net Asset Value Statement has not been prepared on a basis consistent with the requirements of Section 2.6(a), the Buyers shall, on or before the last day of such 30-day period, inform the Sellers in writing (the "Objection"), setting forth a specific description of the basis of the Objection, the adjustments to the Net Asset Value Statement which the Buyers believe should be made, and the Buyers' calculation of the Net Asset Value, and the Buyers shall be deemed to have accepted any items not specifically disputed in the Objection. Failure to so notify the Sellers shall constitute acceptance and approval of the Sellers' calculation of the Net Asset Value.

(c) If the Net Asset Value calculated by the Buyer and the Net Asset Value calculated by the Sellers are both less than the Net Asset Value Base Amount, the Sellers shall pay an amount in cash equal to the sum of (w) the amount of the deficiency between the Net Asset Value Base Amount and the Net Asset Value calculated by the Sellers plus (x) interest computed at the rate declared from time to time by JPMorgan Chase Bank at its "base rate" (the "Prime Rate") for the period from the Closing Date to the date of such payment of the deficiency amount, in immediately available funds to the Buyer no later than the third Business Day

following the Sellers' receipt of the Buyers' Objection. If the Net Asset Value calculated by the Buyers and the Net Asset Value calculated by the Sellers are both greater than the Net Asset Value Base Amount, the Buyer shall pay the Sellers an amount in cash equal to the sum of (y) the amount of the excess of the Net Asset Value calculated by the Buyer over the Net Asset Value Base Amount plus (z) interest computed at the Prime Rate for the period from the Closing Date to the date of such payment of the excess amount, in immediately available funds to the Sellers no later than the third Business Day following the Sellers' receipt of the Buyers' Objection.

(d) The Sellers shall have 30 days following the date they receive the Objection to review and respond to the Objection. The Buyers will provide the Sellers and their accountants access to any relevant books and records of the Business not in the possession of Sellers, work papers and to any other information necessary to evaluate the Objection. If the Sellers and the Buyers are unable to resolve all of their disagreements with respect to the determination of the foregoing items by the 30th day following the Sellers' response thereto, after having used their good faith efforts to reach a resolution, they shall refer their remaining differences to Deloitte & Touche or another internationally recognized firm of independent public accountants as to which the Sellers and the Buyers mutually agree (the "CPA Firm"), who shall, acting as experts in accounting and not as arbitrators, determine on a basis consistent with the requirements of Section 2.6(a), and only with respect to the specific remaining accounting related differences so submitted, whether and to what extent the Net Asset Value Statement requires adjustment. The Sellers and the Buyers shall request the CPA Firm to use its best efforts to render its determination within 45 days. The CPA Firm's determination shall be conclusive and binding upon the Sellers and the Buyers. The Sellers and the Buyers shall make reasonably available to the CPA Firm and each other all relevant books and records, any work papers (including those of the parties' respective accountants) and supporting documentation relating to the Net Asset Value Statement and all other items reasonably requested by the CPA Firm. The "Final Statement of Net Asset Value" shall be (i) the Net Asset Value Statement in the event that (x) no Objection is delivered to the Sellers during the initial 30-day period specified above or (y) the Sellers and the Buyers so agree, (ii) the Net Asset Value Statement, adjusted in accordance with the Objection, in the event that (x) Sellers do not respond to the Objection during the 30-day period specified above following receipt by the Sellers of the Objection or (y) the Sellers and the Buyers so agree or (iii) the Net Asset Value Statement, as adjusted pursuant to the agreement of the Buyers and the Sellers or as adjusted by the CPA Firm together with any other modifications to the Net Asset Value Statement agreed upon by Sellers and the Buyers. All fees and disbursements of the CPA Firm shall be borne equally by the Sellers, on the one hand, and the Buyers, on the other hand.

(e) If the calculation of the Net Asset Value contained in the Final Statement of Net Asset Value is less than the Net Asset Value Base Amount, the Sellers shall pay an amount in cash equal to the difference of (x) the amount of such deficiency minus (y) any amounts paid by the Sellers to the Buyers pursuant to clause (w) of Section 2.6(c) (not including any interest provided for in clause (x) of Section 2.6(c)) (such difference, the "Remaining Net Asset Value Deficiency"), plus (z) interest computed at the Prime Rate for the period from the Closing Date to the date of such payment on the Remaining Net Asset Value Deficiency, in immediately available funds to the Buyers within three (3) Business Days after the ultimate determination of the Final Statement of Net Asset Value as provided in this Section 2.6. If the

calculation of the Net Asset Value contained in the Final Statement of Net Asset Value is greater than the Net Asset Value Base Amount, the Buyers shall pay an amount in cash equal to the difference of (1) the amount of such excess minus (2) any amounts paid by the Buyers in cash to the Sellers pursuant to clause (y) of Section 2.6(c) (not including any interest provided for in clause (z) of Section 2.6(c)) (such difference, the "Remaining Net Asset Value Excess"), plus (3) interest computed at the Prime Rate for the period from the Closing Date to the date of such payment on the Remaining Net Asset Value Excess, in immediately available funds to the Sellers, within three (3) Business Days after the ultimate determination of the Final Statement of Net Asset Value as provided in this Section 2.6.

(f) The Base Statement of Net Asset Value has been prepared in good faith by the Sellers for the purpose of correctly listing, to the Knowledge of the Sellers, all Acquired Assets (excluding, for the avoidance of doubt, Excluded Assets and excluding Cash that is included in the adjustment provided for in Section 2.3(b)) and Assumed Liabilities (excluding, for the avoidance of doubt, Excluded Liabilities and excluding Indebtedness of the Sold Companies that is included in the adjustment provided for in Section 2.3(b)) as of the date of the Base Statement of Net Asset Value. For the avoidance of doubt, the parties intend that the Base Statement of Net Asset Value and the Final Statement of Net Asset Value shall not include any Excluded Assets or Excluded Liabilities. The Base Statement of Net Asset Value and the Final Statement of Net Asset Value shall be consistently prepared. In the event that the parties determine, in good faith, that the Base Statement of Net Asset Value should have taken into account any Asset or Liability of the Business which mistakenly was not so included, then the Base Statement of Net Asset Value shall be adjusted accordingly and the Final Statement of Net Asset Value shall be prepared on a basis consistent with the revised Base Statement of Net Asset Value. In the event that the Base Statement of Net Asset Value takes into account any Asset or Liability which the parties later determine, in good faith, should not have been so included, then the Base Statement of Net Asset Value shall be adjusted accordingly and the Final Statement of Net Asset Value shall be prepared on a basis consistent with the revised Base Statement of Net Asset Value. In the event that the parties are unable to agree upon adjustments in accordance with this Section 2.6(f) after discussion for 30 days, the disagreement shall be resolved by the CPA Firm who shall, acting as experts in accounting and not as arbitrators, determine on a basis consistent with the requirements of this Section 2.6(f), and only with respect to the specific disagreements so submitted, the proper adjustments.

SECTION 2.7. Purchase Price Allocation.

(a) The Purchase Price (including Assumed Liabilities that are treated as assumed for Tax purposes) shall be allocated among (i) the Acquired Assets sold by the Asset Sellers and (ii) the Sold Shares, in a manner that will be mutually agreed by the parties, in good faith, as soon as practicable following the execution of this Agreement. In the event an adjustment to the Purchase Price is made pursuant to Section 2.3(b) or 2.6 or otherwise under this Agreement, the allocation of the Purchase Price (including Assumed Liabilities that are treated as assumed for Tax purposes) shall be revised to allocate such adjustment to the Acquired Assets or Sold Shares, as the case may be, based upon the item to which such adjustment is attributable.

(b) The Sellers shall prepare an allocation among the Acquired Assets sold by the Asset Sellers in the United States (in accordance with the allocation that is agreed under Section 2.7(a) and Section 1060 of the Code and the Treasury Regulations promulgated thereunder) and submit it to the Buyers for their approval within 60 days of the final purchase price adjustment. If within 30 days of such submission the Buyers and the Sellers are unable to agree upon the allocation after negotiating in good faith, the parties will each prepare their own allocation in a manner consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder.

(c) Except as otherwise provided by the immediately preceding paragraph or as required by applicable Law, the Sellers and the Buyers shall report the Tax consequences of the transactions contemplated by this Agreement in a manner consistent with the allocation that is agreed under Section 2.7(a) and the Purchase Price allocation described therein, as it may be revised from time to time, and shall not take any position inconsistent therewith in preparing any Tax Returns, (including IRS Form 8594 and any other Tax forms or filings), as well as in preparing any published financial statements in accordance with Modified GAAP, and none of the Buyers or the Sellers shall take any position inconsistent therewith upon examination of any Tax Return, in any Tax refund claim, or in any Tax litigation or investigation, in each case involving a material amount of Taxes, without the prior written consent of IR or Buyer Parent, in each case, such consent not to be unreasonably withheld or delayed.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Sellers, jointly and severally, hereby represent and warrant to the Buyers as of the date hereof and as of the Closing Date as follows:

SECTION 3.1. Organization.

Each of the Sellers and Sold Companies is a corporation or other business entity duly incorporated or organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization. Each of the Sellers and Sold Companies has all requisite corporate or other power and authority to own its Assets and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in the jurisdictions in which the ownership of its property or the conduct of its business requires such qualification or license, except where the failure to be so qualified or licensed would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect.

SECTION 3.2. Authorization, Enforceability.

Each of the Sellers has the corporate or other power and authority to execute and deliver this Agreement and each Closing Agreement to which it is a party and to perform its obligations hereunder and thereunder. Except as described on Schedule 3.7, the execution and delivery by each Seller of this Agreement and each Closing Agreement to which it is a party, and the performance by such Seller of its obligations hereunder and thereunder, have been duly

authorized by all necessary corporate or other action on the part of such Seller. This Agreement has been duly executed and delivered by each of the Sellers and each Seller shall duly execute and deliver each Closing Agreement to which it is a party and, assuming due authorization, execution and delivery by the Buyers, this Agreement constitutes, and each Closing Agreement shall constitute, a valid and binding agreement of each of the Sellers party thereto, enforceable against each of them in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 3.3. Capital Stock of the Sold Companies.

Set forth on Schedule 3.3 is the jurisdiction of incorporation or organization and the number of authorized, issued and outstanding shares of each of the Sold Companies and, except as set forth on Schedule 3.3, there are no other authorized, issued or outstanding shares of capital stock of the Sold Companies. Except as set forth on Schedule 3.3, all of the issued and outstanding Sold Shares are owned of record, free and clear of any and all Encumbrances, by the Stock Seller identified on Schedule 3.3 as owning such Sold Shares. All of such issued and outstanding Sold Shares and shares of the other Sold Companies have been validly issued, are fully paid and nonassessable and have not been issued in violation of any preemptive or similar rights. Except as set forth on Schedule 3.3, there are no outstanding options, warrants, calls, rights or any other agreements relating to the sale, issuance or voting of any shares of the capital stock of the Sold Companies, or any securities or other instruments convertible into, exchangeable for or evidencing the right to purchase any shares of capital stock of the Sold Companies. Except for any intercompany arrangements that may exist with IR or its Affiliates, which are disclosed on Schedule 3.11 or Schedule 3.15(a), none of which shall transfer to the Buyers or remain binding upon any Sold Company after the Closing, and except for the Domination Agreement and the ABG Agreement, no Sold Company and no Stock Seller of any Sold Shares of any Sold Company is party to any agreement that grants any Person (other than a Sold Company) any rights in respect of (i) corporate governance or profits of any Sold Company and or (ii) voting rights of any Sold Shares.

SECTION 3.4. Subsidiaries. No Sold Companies have any Subsidiaries or own, or have any obligation to make or acquire, any Investments, except as set forth on Schedule 3.3.

SECTION 3.5. Financial Statements.

(a) The combined unaudited balance sheet of the Business as of December 31, 2006 (the "Balance Sheet") and the related unaudited combined income statement of the Business for the year ended December 31, 2006 (together with the Balance Sheet, the "Financial Statements") are attached hereto as Schedule 3.5. The Financial Statements have been prepared from the Books and Records of the Business and in accordance with Modified GAAP applied on a consistent basis. The unaudited combined income statement included in the Financial Statements presents fairly in all material respects the combined results of operations of the Business for the period covered, and the Balance Sheet presents fairly in all material respects the combined financial condition of the Business as of its date, in each case in accordance with Modified GAAP applied on a consistent basis.

(b) Section 3.5(a) is qualified by the fact that the Acquired Assets and Sold Companies comprising the Business have not operated as separate "stand alone" entities within IR. As a result, the Business, the Acquired Assets and the Sold Companies have been allocated certain charges and credits for purposes of the preparation of the Financial Statements. Such allocations of charges and credits do not necessarily reflect the amounts that would have resulted from arms-length transactions or the actual costs that would be incurred if the Business operated as an independent enterprise.

SECTION 3.6. Absence of Undisclosed Liabilities. There are no Liabilities of any kind whatsoever, and, to the Knowledge of the Sellers, there are no existing facts, conditions or set of circumstances which could reasonably be expected to give rise to or result in any such Liability, that are required to be reflected in a combined balance sheet of the Business prepared in accordance with Modified GAAP, other than Liabilities (i) reflected on, or reserved for in, the Balance Sheet, (ii) arising after December 31, 2006, in the ordinary course of business and consistent with past practices, (iii) disclosed on Schedule 3.6 and Schedule 3.11(e), (iv) that would not, individually or in the aggregate, have a Company Material Adverse Effect and (v) that constitute Excluded Liabilities.

SECTION 3.7. No Approvals or Conflicts. Except as set forth on Schedule 3.7, the execution, delivery and performance by the Sellers of this Agreement and the Closing Agreements and the consummation by the Sellers of the transactions contemplated hereby and thereby do not and will not (i) violate, conflict with or result in a breach by any of the Sellers or the Sold Companies of the organizational documents of any of the Sellers or the Sold Companies, (ii) violate, conflict with or result in a breach of, or constitute a default by any of the Sellers or the Sold Companies (or create an event which, with notice or lapse of time or both, would constitute a default) under any Contract to which any of the Sellers or the Sold Companies or any of their respective properties may be bound, (iii) violate or result in a breach of any Order or Law applicable to any of the Sellers or the Sold Companies or any of their respective properties, (iv) except for applicable requirements of the HSR Act and Other Competition Laws and as may be required solely by reason of the Buyers' (as opposed to any other third parties') participation in the transactions contemplated hereby, require any Consent of any Governmental Authority and (v) require any Consent of any other Person, except, in each of the foregoing cases, as would not individually or in the aggregate reasonably be expected to have a Company Material Adverse Effect or a material and adverse effect on the ability of any of the Sellers to consummate the transactions contemplated by this Agreement.

SECTION 3.8. Compliance with Law; Governmental Authorizations. Except as set forth on Schedule 3.8, the Sold Companies and the Asset Sellers in respect of the Acquired Assets and the conduct of the Business are in compliance, in all material respects, with the Orders and Laws applicable to them and their respective properties. Except as set forth on Schedule 3.8, during the two years prior to the date hereof, the Business has been conducted and the Acquired Assets have been used and operated by the Sellers and their Affiliates in compliance with the Orders and Laws applicable to them and their respective properties, except for incidents of non-compliance that would not, individually or in the aggregate, have a Company Material Adverse Effect. The Asset Sellers and the Sold Companies have all material licenses, permits, franchises, registrations and other governmental authorizations necessary to conduct the Business as presently conducted as a going concern ("Permits"). This Section 3.8

(a) does not relate to matters with respect to (i) Taxes, which are the subject of Section 3.11, (ii) ERISA and other Laws applicable to the benefit plans, which are the subject of Section 3.12, and (iii) environmental matters, which are the subject of Section 3.16.

SECTION 3.9. Litigation. Except as set forth on Schedule 3.9, there is (a) no material outstanding Order against any Seller relating to the Business, any of the Sold Companies or the Sold Shares or any of the Acquired Assets, (b) no suit, action or legal, governmental, administrative, arbitration or regulatory proceeding ("Proceeding") that is material and pending or, to the Knowledge of the Sellers, threatened against any Seller or Sold Company relating to the Business, any of the Sold Companies or the Sold Shares or any of the Acquired Assets, and (c) no material investigation by any Governmental Authority pending or, to the Knowledge of the Sellers, threatened against the Sellers or the Sold Companies relating to the Business, any of the Sold Companies or the Sold Shares or any of the Acquired Assets. Except as set forth on Schedule 3.9, or elsewhere in the Disclosure Schedules to this Agreement to the extent that it is apparent on the face of such disclosure that such disclosure contains information which also modifies this sentence, to the Knowledge of the Sellers, there are no existing facts, conditions or circumstances which could reasonably be expected to result in or give rise to any material suit, action or legal, governmental, administrative, arbitration or regulatory Proceeding against any Asset Seller in respect of the Business or against any Sold Company.

SECTION 3.10. Ordinary Course. Except as set forth in Schedule 3.10, with respect to the matter disclosed in Schedule 3.11(e) or as specifically contemplated by this Agreement, from December 31, 2006 through the date of this Agreement, the Business has been conducted in all material respects in the ordinary course consistent with past practice.

SECTION 3.11. Tax Matters. Except as set forth in Schedule 3.11:

(a) All material Tax Returns required to be filed by or on behalf of the Sold Companies or in connection with the Business or the Acquired Assets have been, or will be by the Closing Date, duly and timely filed (subject to permitted extensions applicable to such filing), such Tax Returns are, or will be, correct and complete in all material respects and all material Taxes due and payable (by withholding or otherwise) on or prior to the Closing Date in respect of the Business, the Acquired Assets or the Sold Companies have been, or will be by the Closing Date, fully, duly and timely paid. Any charges, accruals or reserves (if any) for Taxes payable by the Sold Companies accrued as of the Closing Date but not yet due and payable on or prior to that date will be adequately reflected on the Final Statement of Net Asset Value.

(b) No claim for any unpaid material Taxes has become an Encumbrance against the Acquired Assets or any Assets of the Sold Companies except for Permitted Encumbrances.

(c) There are no examinations, audits, actions, Proceedings, investigations, disputes, assessments or claims pending, asserted or threatened in writing regarding Taxes relating directly to the Sold Companies, the Business or the Acquired Assets that would reasonably be expected to result in a material increase in Taxes relating to the Sold Companies, the Business or the Acquired Assets for any taxable period ending after the Closing Date. No written notice from any Taxing Authority in a jurisdiction in which Tax Returns are not filed by

or on behalf of the Sold Companies or in connection with the Business or the Acquired Assets has been received stating that any of the Sold Companies, the Business or the Acquired Assets is or may be subject to taxation by that jurisdiction

(d) There are no agreements or consents currently in effect for the waiver of any statute of limitations or extension of time with respect to an assessment or collection of any material Taxes of the Sold Companies.

(e) No Sold Company is a party to or bound by any material Tax allocation, Tax Indemnity or Tax sharing agreement.

(f) No Sold Company is or has been a member of an affiliated, consolidated, combined or unitary Tax group.

(g) None of the Acquired Assets or any Assets of any Sold Company is property required to be treated as being owned by any other person pursuant to the "safe harbor lease" provisions of former Section 168(f)(8) of the Code.

(h) None of the Acquired Assets or any Assets of any Sold Company is "tax-exempt bond financed property" within the meaning of Section 168(g) of the Code.

(i) None of the Acquired Assets or any Assets of any Sold Company is "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(j) None of the Sold Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income (in each case, which would result in a material increase in Taxes) for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing Date, (ii) disposition made on or prior to the Closing Date, (iii) prepaid amount received on or prior to the Closing Date, (iv) intercompany transaction occurring on or prior to the Closing Date, or (v) excess loss account.

(k) None of the Sold Companies has within the past three (3) years been a party to a transaction (as a "distributing corporation" or "controlled corporation") intended to qualify under Section 355 of the Code or under so much of Section 356 of the Code as relates to Section 355 of the Code.

(l) To the Knowledge of the Sellers, none of the Sold Companies has entered into any transaction which is a "reportable transaction" (as defined in Treasury Regulation Section 1.6011-4) which has not been adequately disclosed to the IRS.

SECTION 3.12. Employee Benefits.

(a) Schedule 3.12 contains a true and complete list of all "employee benefit plans" (within the meaning of Section 3(3) of ERISA), including all plans of a similar nature in jurisdictions outside of the United States, whether or not funded and whether or not subject to ERISA, and all severance, change in control, employment, consulting, incentive, bonus, fringe benefit, stock option, stock purchase and restricted stock or stock-based plans, programs,

arrangements, agreements or policies which cover any current employee or Former Employees, directors or consultants of the Sold Companies or the Business or in which such individuals participate, or from which such individuals derive a benefit, or in which such individuals may become eligible to participate, and that are sponsored or maintained by, or required to be contributed to by, the Sold Companies or the Sellers or any ERISA Affiliate, or with respect to which the Sold Companies, the Sellers or any ERISA Affiliate may incur any Liability, all of which shall hereinafter be referred to as the "Company Group Plans". Company Group Plans that are organized in the United States shall hereinafter be referred to as "U.S. Company Group Plans" and Company Group Plans which are not U.S. Company Group Plans shall hereinafter be referred to as "Non-U.S. Company Group Plans."

(b) Schedule 1.2 contains a true and complete list of all Business Employees, indicating for each: the employer, work location, job title or function, and job status (exempt or non-exempt). Additional information about the Business Employees, as the Buyers may request from time to time, will be provided to Buyers between the date of this Agreement and the Closing, provided that such information may be provided to Buyers under applicable Law. Except as set forth in Schedule 3.12 or as provided by Law, the employment of all Business Employees is terminable at will.

(c) With respect to each Company Group Plan, the Sellers or the Sold Companies have made available to the Buyers or their representatives a current copy thereof (or, where no document exists, a written description of the material terms thereof) including all existing or proposed amendments thereto, and to the extent applicable and existing as of the date hereof, (i) any related trust agreement, insurance Contracts or other funding instrument, (ii) the most recent IRS favorable determination letter, (iii) any summary plan description and (iv) the most current actuarial report, (iv) most recent Form 5500 and attached schedules, and (v) any filings made with a Governmental Authority within the last twelve months. With respect to each Company Group Plan that has not been provided to the Buyers, as indicated on Schedule 3.12(a), such Company Group Plan will not result in any material liability to any Buyer or Sold Company.

(d) Each U.S. Company Group Plan which is intended to be qualified, within the meaning of Section 401 of the Code, has received a favorable determination letter as to its qualification (or has filed for such a letter before the expiration of the applicable remedial amendment period), and nothing has occurred that could reasonably be expected to adversely affect such qualification. Each U.S. Company Group Plan has been administered and maintained in all material respects in compliance with its terms and the applicable provisions of ERISA, the Code and other applicable Laws. None of the Sellers, any Sold Company nor any ERISA Affiliate (i) except as disclosed on Schedule 3.12(d), contributes or has ever contributed to, or had any obligation to contribute to, or withdrawn in a complete or partial withdrawal from, within the last six years, a multiemployer plan as defined in Section 4001(a)(3) or Section (3)(37) of ERISA or (ii) has any fixed or contingent Liability under Section 4204 of ERISA. None of the Sellers, the Sold Companies or any ERISA Affiliate has incurred any material Liability, directly or indirectly, for breach of any provision of ERISA or has engaged in or is a successor or parent corporation to an entity that has engaged in a transaction described in section 4069 of ERISA. To the Knowledge of the Sellers, no condition exists and no event has occurred

that could constitute grounds for the termination of any Company Group Plan by the PBGC and no filing has been made or Proceeding commenced to terminate any Company Group Plan.

(e) There are no pending or threatened claims against any Company Group Plan or otherwise involving any Company Group Benefit Plan or the Assets of any Company Group Plan (other than routine claims for benefits) that would impair or hinder any of the Assets or increase the amount of any Liability to be assumed by Buyers (or retained by the Sold Companies) pursuant to the terms of Section 5.9.

(f) Except as set forth in Schedule 3.12(f) or as specifically contemplated by the Agreement, as of the date hereof, none of the Sellers or Sold Companies or any ERISA Affiliate has communicated to any Business Employee or Former Employee of the Sellers or Sold Companies or the Business any intention or commitment to materially modify any Company Group Plan or to establish or implement any other employee or retiree benefit or compensation plan or arrangement (other than as required by applicable Laws or any Collective Bargaining Agreement).

(g) All Non-U.S. Company Group Plans comply and have been maintained in compliance in all material respects with their terms and all applicable Collective Bargaining Agreements and Laws. With respect to all Non-U.S. Company Group Plans, subject to any funding requirements of applicable Law, there is no material unfunded Liability not properly reflected in the Balance Sheet.

(h) Schedule 3.12 contains a true and complete list of all applicable agreements entered into with any works council outside the United States with respect to any current employee or Former Employee of the Business under which any Seller or Sold Company or the Business may incur any Liability. Except as set forth in Schedule 3.12, no early retirement arrangement ("Vorruhestandsvereinbarung") or old age part-time arrangement ("Altersteilzeitvereinbarung") is in place with respect to any Business Employee of IR Germany, and none of the Business Employees of IR Germany has the right to enter into any such early retirement or old age part-time arrangement. IR Germany has not agreed to any kind of job guarantee ("Arbeitsplatzgarantie") or workplace guarantee ("Standortgarantie") in respect of any Business Employee or Former Employee.

(i) All payments and obligations due or accrued for the period ending on the Closing Date with respect to the Business Employees and consultants to the Business, including all obligations arising under Collective Bargaining Agreements and works agreements, and all contributions and premium payments required to be made to or with respect to each Company Group Plan prior to the Closing Date, and all such payments, obligations, contributions and premium payments for any period ending on or before the Closing Date that are not yet due, will be made or will be properly accrued or reserved for and reflected in the Final Statement of Net Asset Value.

(j) There is no Contract, plan or arrangement covering any Business Employee or consultant to the Business that, individually or collectively, provides for the payment by the Sellers or any of its ERISA Affiliates or the Buyers of any amount that is not deductible under Section 162(a)(1) or 404 of the Code or that is an excess parachute payment

pursuant to Section 280G of the Code. To the Knowledge of the Sellers, any "nonqualified deferred compensation plan", within the meaning of Code Section 409A(d)(1), between the Sellers or any Sold Company and a "service provider" is in good faith compliance with the proposed Treasury Regulation thereunder and IRS Notice 2005-1.

(k) Except as set forth in Schedule 3.12(k), none of the Sellers, any Sold Company, any ERISA Affiliate or any Company Group Plan has any present or future obligation to make any payment to or with respect to any Business Employee or Former Employee pursuant to any retiree medical benefit plan or other retiree welfare benefit plan. Except as set forth on Schedule 3.12(k), no condition exists which would prevent Sellers, any Sold Company or the Buyers from amending or terminating any plan disclosed on Schedule 3.12.

(l) Except as set forth on Schedule 3.12(l), the transactions contemplated by this Agreement will not cause the acceleration of vesting in (except as may be required by Code Section 411(d)), or payment of, any material benefits under any Company Group Plan and shall not otherwise accelerate or increase by any material amount any Liability under any Company Group Plan, including any employment, consulting, severance, separation, change in control or termination agreement or any severance, retention, success bonus, transaction bonus or other compensation plan program or arrangement.

(m) All employees, officers, directors and agents of the Sellers, Sold Companies and their Affiliates who were informed of the transactions contemplated hereby were duly notified that no general communication or representation, or communication or representation may be made to any individual, regarding any employee or employee benefits matters. To the Knowledge of Sellers, no employee, officer, director or agent of any Seller, any Sold Company or any Affiliate of any of them has made any representation with respect to employment by Buyers of any Business Employee, or the terms and conditions of any such employment (including, without limitation, wages, salaries, commissions, bonus opportunities and employee benefits) or the provision by Buyers of any benefits to or with respect to any Business Employee or Former Employee, except with respect to creating the list of Business Employees in Schedule 1.2.

SECTION 3.13. Labor Relations.

(a) Except as set forth in Schedule 3.13, (i) none of the Sellers, with respect to the Business, nor any Sold Company is a party to any collective bargaining agreement or other agreement established with Business Employees or a group thereof or representatives thereof that sets forth any terms or conditions of employment (including, with respect to Business Employees resident in France, any referendum), or any regional, local, company or business branch practices of Sellers or any Sold Company or any unilateral undertakings that provide for advantages relating to employment exceeding those resulting from applicable Laws (collectively, "Collective Bargaining Agreements"), nor is any such Contract or agreement presently being negotiated or contemplated, (ii) there is no attempt by organized labor to cause the Sellers or any Sold Company to recognize any union or collective bargaining unit not previously recognized with respect to the Business, (iii) there is no unfair labor practice charge or comparable or analogous complaint pending before the National Labor Relations Board or before another comparable administrative body or, to the Knowledge of the Sellers, threatened with any

administrative, judicial or other governmental body inside or outside the United States against the Sold Companies or any Seller or Affiliate thereof, with respect to the Business, (iv) there is no grievance, arbitration, or arbitration award pending or, to the Knowledge of the Sellers, threatened against the Sold Companies or any Seller or Affiliate thereof, with respect to the Business, (v) there are currently, and in the five years preceding the date hereof have been, no work stoppages, strikes, slowdowns, warning strikes or other material disruptions by employees of the Business and (vi) neither the Sold Companies nor any Seller, with respect to the Business, is in material breach of any Collective Bargaining Agreement.

(b) The Sellers and the Sold Companies have, whenever required by Law, duly informed and consulted each works' council in connection with the entering into of this Agreement and, where required, said works' councils have accordingly issued an opinion in compliance with applicable Laws.

(c) The Sellers, with respect to the workforce of the Business, and the Sold Companies, have complied in all material respects with all employment Contracts, Collective Bargaining Agreements, and works agreements and all Laws pertaining to the engagement or termination of services of employees, officers, directors or consultants associated with the Business, including, without limitation, all such Laws relating to terms and conditions of employment, labor relations, wages and hours, equal employment opportunities, fair employment practices, immigration, prohibited discrimination or distinction, employment and reemployment rights of members of the uniformed services and occupational safety and health. None of the Sellers nor any Sold Company has any liability for Taxes, benefits or compensation or otherwise as a result of the misclassification of (i) employees as independent contractors or (ii) independent contractors as employees. Except as set forth on Schedule 3.12 or 3.13, neither the Sellers nor Any Sold Company has entered into any severance or similar arrangement in respect of any current employee or Former Employee of the Business that will result in any obligation (absolute or contingent) of the Buyers or the Sold Companies to make any payment to any Business Employee following termination of employment or upon a change of control of the Seller or any Sold Company.

SECTION 3.14. Intellectual Property. Set forth on Schedule 3.14(a) is a complete and accurate list of all: (i) issued patents and pending patent applications, (ii) utility model registrations and applications (iii) trademark and service mark registrations and applications, (iv) copyright registrations and applications, (v) design registrations and applications, (vi) mask works registrations and applications, and (vi) internet domain name registrations (collectively, "Registered Intellectual Property"), in each case that are either owned by the Sold Companies or that constitute Acquired Assets. With respect to each item of Intellectual Property set forth on Schedule 3.14(a): (a) the applicable Sold Company or Asset Seller is the sole owner of the entire right, title and interest in and to such Intellectual Property free and clear of any Encumbrance, license, or other restriction (other than Permitted Encumbrances); and (b) there is no Proceeding pending, or to the Knowledge of the Sellers, threatened, that challenges the validity, enforceability, registration, ownership or use of such Intellectual Property. Set forth on Schedule 3.14(b) is a complete and accurate list of all Registered Intellectual Property that constitutes Seller Licensed Intellectual Property. Set forth on Schedule 3.14(c) is a complete and accurate list of all Contracts pursuant to which the Sold Companies and the Asset Sellers use or are licensed under the Intellectual Property of third

parties in the conduct of the Business (other than shrink wrap and click wrap software, and off-the-shelf software, each with license, maintenance, support, or other fees of less than $50,000 in any 12 month period) (the "Licensed Intellectual Property"). True, correct and complete copies of all Contracts for Licensed Intellectual Property have been made available to the Buyers. Except as set forth in Schedule 3.14(c), the consummation of the transactions contemplated hereunder will not result in the loss or impairment of the Sold Companies' or the Buyer's right to use the Licensed Intellectual Property in connection with the Business, nor require the consent of any Person. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or as otherwise set forth on Schedule 3.14: (i) the Sold Companies and the Asset Sellers in respect of the Business own or have the right to use all Intellectual Property that is necessary to the Business, and (ii) to the Knowledge of the Sellers, the Sold Companies and the Asset Sellers in respect of the Business are not infringing, misappropriating, diluting, or otherwise violating any Intellectual Property of any other Person. Except as set forth on Schedule 3.14, no Proceeding is pending, or to the Knowledge of the Sellers, threatened, alleging that the Sold Companies or that the conduct of the Business by the Asset Sellers infringes upon, dilutes, misappropriates, or otherwise violates the Intellectual Property rights of any other Person. To the Knowledge of the Sellers, no Person is infringing upon, diluting, misappropriating or otherwise violating the Intellectual Property of the Sold Companies or the Intellectual Property that constitutes Acquired Assets. The Sold Companies and the Asset Sellers are taking and have taken all actions required to maintain, and all actions that they reasonably believe are required to protect, each item of Intellectual Property that is material to the Business.

SECTION 3.15. Contracts.

(a) Schedule 3.15(a) sets forth a complete list as of the date of this Agreement of each of the following Contracts to which any of the Sold Companies or the Asset Sellers in respect of the Business is a party or by which any of them is bound and Company Group Plans (which may be set forth elsewhere in the Disclosure Schedules) (collectively, the "Material Contracts"), provided, that any representation or warranty contained in this Section 3.15(a), to the extent that it pertains to Material Contracts involving information technology, computer systems or software of the Business, is given only to the Knowledge of the Sellers:

(i) Contracts involving the expenditure by the Sold Companies or the Asset Sellers in respect of the Business of more than $1,000,000 per calendar year for the purchase of materials, supplies, Equipment or services, excluding any such Contracts that are terminable by the Sold Companies or the Asset Sellers without penalty on not more than 90 days' notice and without material Liability and without any material obligations arising during such 90 day period;

(ii) indentures, mortgages, loan agreements, capital leases, or other Contracts of the Sold Companies for the borrowing of money in excess of $1,000,000;

(iii) guarantees of the obligations of other Persons (other than the Sold Companies in respect of the Business) or agreements of indemnity, surety or similar Contracts, whether direct or indirect, involving the potential expenditure by the Sold Companies or the Asset Sellers in respect of the Business after the date of this Agreement

of more than $1,000,000 in any instance or $5,000,000 in the aggregate over the lifetime of such Contract;

(iv) all Real Estate Leases listed on Schedule 3.18(a);

(v) Contracts that restrict the Sold Companies or any Sellers after the date of this Agreement from engaging in the Business in any geographic area or competing with any Person in the Business that materially impairs the operation of the Business, taken as a whole;

(vi) license agreements (as licensor or licensee) with third parties (excluding end-user licenses granted to customers of the Sold Companies or the Asset Sellers in respect of the Business), franchise, sales (other than open purchase orders) or commission agreements or similar Contracts under which any of the Sold Companies or the Asset Sellers in respect of the Business is obligated to pay after the date of this Agreement an amount in excess of $1,000,000 during any calendar year or $5,000,000 in the aggregate over the lifetime of such Contract;

(vii) partnership, limited liability company or joint venture agreements, and Contracts for or relating to any investment (whether through the acquisition of an equity interest, the making of a loan or advance or otherwise) in any other person;

(viii) Contracts under which the Sold Companies or the Asset Sellers in respect of the Business has obligations or contingent Liabilities after the date of this Agreement relating to the acquisition or sale of any business enterprise, in each case for consideration in excess of $1,000,000 or $5,000,000 in the aggregate over the lifetime of such Contract;

(ix) Contracts under which any Sold Company or any Asset Seller has granted, or may be required to grant, any Encumbrance other than a Permitted Encumbrance;

(x) any Contract, not otherwise described in this Section 3.15, under which any of the Sold Companies or the Asset Sellers in respect of the Business is obligated to pay or is expected to receive after the date of this Agreement an amount in excess of $1,000,000 during any calendar year or $5,000,000 in the aggregate over the lifetime of such Contract;

(xi) Contracts between any of the Sold Companies or the Asset Sellers in respect of the Business, on the one hand, and any of the Sellers or any Subsidiaries of any of the Sellers (excluding the Sold Companies), on the other, which (A) provides for aggregate payments after the date hereof by or to any of the Sold Companies or any Asset Sellers in respect of the Business of more than $1,000,000 during any calendar year or $5,000,000 in the aggregate over the lifetime of such Contract, or (B) cannot be terminated without penalty on not more than 90 days' notice and without material Liability and without any material obligations arising under the terms thereof during such 90 day period; and

(xii) the Road Sales & Service Agreements and the Shared Sales & Service Agreements.

(b) True, correct and complete copies of all Material Contracts have been made available to the Buyers. Except as set forth in Schedule 3.15(b), each Material Contract is in full force and effect, and is a valid and binding agreement of the applicable Sold Company or the applicable Asset Seller, enforceable against such Sold Company or Asset Seller in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a Proceeding in equity or at Law) and an implied covenant of good faith and fair dealing. Except as set forth on Schedule 3.15(b), no condition exists or event has occurred that (whether with or without notice or lapse of time or both) would constitute a default by any of the Sold Companies or any Asset Seller or, to the Knowledge of the Sellers, of any other party thereto, under any Material Contract, except for defaults that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. All Contracts under Section 3.15(a)(xi) which will survive the Closing are on an arms length basis. Notwithstanding anything to the contrary stated above, this Section 3.15(b), to the extent it applies to Material Contracts pertaining to information technology, computer systems or software of the Business, is given only to the Knowledge of the Sellers.

SECTION 3.16. Environmental Matters. Except as set forth on Schedule 3.16:

(a) Each of the Sold Companies and the Asset Sellers in respect of the Business is, and has been, in compliance with all Environmental Laws, except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect;

(b) Each of the Sold Companies and Asset Sellers has obtained all Permits which are required under the Environmental Laws for the ownership, use and operation of the Business, such Permits are in effect and each Sold Company and Asset Seller is, and has been, in compliance with all terms and conditions of such Permits, except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect;

(c) To the Knowledge of the Sellers, none of the Sold Companies or the Asset Sellers in respect of the Business has received any Environmental Claim or notice of any threatened Environmental Claim;

(d) None of the Sold Companies or the Asset Sellers in respect of the Business has entered into, has agreed to, or is subject to, any (i) decree or Order or other similar requirement of any Governmental Authority under any Environmental Laws or (ii) Contract with any Person whereby any of the Sold Companies or Asset Sellers has provided an indemnity for, or otherwise retained responsibility for any Liabilities pursuant to, any Environmental Law; and

(e) None of the Sold Companies or the Asset Sellers in respect of the Business has Released Hazardous Materials into the environment in violation of Environmental Laws or in a manner that would reasonably be expected to result in Liability under

Environmental Laws, except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect.

This Section 3.16 comprises the sole and exclusive representations and warranties of the Sellers relating to Environmental Laws and Hazardous Materials.

SECTION 3.17. Insurance. Schedule 3.17 lists all insurance policies held in the names of the Sold Companies as of the date hereof. All policies listed on Schedule 3.17 are in full force and effect, all premiums due thereon have been paid and the Sold Companies have complied in all material respects with the provisions of such policies.

SECTION 3.18. Real Property.

(a) Neither the Sellers nor the Sold Companies own, lease or sublease, occupy or otherwise hold any real property or interests therein primarily used or primarily held for use in the Business as of the date of this Agreement, other than the Real Property listed on Schedule 3.18(a).

(b) A Seller or Sold Company (x) owns and has good, valid and marketable title in and to each parcel of Owned Real Property and all the buildings, structures and other improvements located thereon and fixtures attached thereto, and (y) has good and valid leasehold interests in all Leased Real Property, in each case, free and clear of any and all Encumbrances, except Permitted Encumbrances. Sellers and/or a Sold Company, as applicable, have provided Buyers with (i) true and complete copies of vesting deeds reflecting fee ownership of each parcel of material Owned Real Property, and (ii) true and complete copies of the leases, as amended to date, for each material Leased Real Property.

(c) Except as would not reasonably be expected to have a Company Material Adverse Effect or as set forth on Schedule 3.18(c), with respect to the Real Property:

(i) There is no pending or, to the Knowledge of the Sellers, threatened or contemplated, appropriation, condemnation or like Proceeding affecting the Real Property or any part thereof or of any sale or other disposition of the Real Property or any part thereof in lieu of condemnation or other matters materially affecting and impairing the current use, occupancy or value thereof.

(ii) No Seller or Sold Company has received written notice that it is in violation of any applicable zoning law, regulation or other applicable Law, related to or affecting the Real Property or any portion thereof.

(iii) The use of the Real Property, or any portion thereof and the improvements erected thereon, does not violate or conflict with (x) any covenants, conditions or restrictions applicable thereto or (y) the terms and provisions of any contractual obligations relating thereto.

(iv) Except for normal wear and tear, all of the buildings, structures, improvements and fixtures with respect to the Real Property are in a state of repair, maintenance and operating condition so as to permit, and there are no defects with

respect thereto or existing conditions which would impair, the continued day-to-day use of any such buildings, structures, improvements or fixtures in substantially the same manner as conducted prior to Closing.

(d) The Real Property includes all of the properties necessary for the operation of the Business as presently conducted in all material respects and as a going concern, except for any arrangements pertaining to real property that may be provided in the ancillary agreements contemplated hereby.

SECTION 3.19. Personal Property. The items of material Equipment included in the Acquired Assets are in operating condition and good repair, ordinary wear and tear excepted. A Seller or Sold Company (a) owns and has good title to all of the material Equipment included in the Acquired Assets purported to be owned by it and (b) has valid and subsisting leasehold interests in all of the material Equipment purported to be leased by it, in each case, free and clear of any and all Encumbrances other than Permitted Encumbrances. The Acquired Assets (including, for the avoidance of doubt, all of the Acquired Assets owned or held by any Sold Company) constitute all of the Assets that are required to operate the Business as presently conducted in all material respects and as a going concern, except for any arrangements pertaining to personal property that may be provided in the ancillary agreements contemplated hereby.

SECTION 3.20. Inventory. All the Inventory reflected on the Balance Sheet is stated therein net of reserves at the lesser of cost or fair market value in accordance with Modified GAAP.

SECTION 3.21. Accounts Receivable. All the Receivables included in the Acquired Assets shall have arisen from bona fide transactions in the ordinary course of business and represent or will represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business. The respective reserves for doubtful accounts shown on the Balance Sheet are calculated in a manner consistent with Modified GAAP and Sellers' past practice. There are no pending or threatened disputes, contests, claims or rights of set-off in connection with any Receivables, outside of the ordinary course of business (including with respect to the amount or validity thereof).

SECTION 3.22. No Brokers' or Other Fees. Except for Credit Suisse, whose investment banking fees will be paid by IR (exclusive of any fees related to any financing or related services that Credit Suisse may provide to the Buyers, which shall be paid by Buyers), no broker, finder or investment banker is entitled to any fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of any of the Sellers.

SECTION 3.23. No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, none of the Sellers nor any other Person makes any other express or implied representation or warranty to the Buyers.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE BUYERS

The Buyers, jointly and severally, hereby represent and warrant to the Sellers as follows:

SECTION 4.1. Organization. Each Buyer is a corporation or other business entity duly incorporated or organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organization. Each Buyer has all requisite corporate or other power and authority to own its Assets and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in the jurisdictions in which the ownership of its property or the conduct of its business requires such qualification or license, except where the failure to be so qualified or licensed would not reasonably be expected, individually or in the aggregate, to materially impede or delay the ability of the Buyer to consummate the transactions contemplated by this Agreement.

SECTION 4.2. Authorization, Enforceability. Each Buyer has the corporate or other power and authority to execute and deliver this Agreement and each Closing Agreement to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by each Buyer of this Agreement and each Closing Agreement to which it is a party, and the performance by such Buyer of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate or other action on the part of such Buyer. This Agreement has been duly executed and delivered by each of the Buyers and each Buyer shall duly execute and deliver each Closing Agreement to which it is a party and, assuming due authorization, execution and delivery by the Sellers, this Agreement constitutes, and each Closing Agreement shall constitute, a valid and binding agreement of each of the Buyers party thereto, enforceable against each of them in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at Law).

SECTION 4.3. No Approvals or Conflicts. The execution, delivery and performance by the Buyers of this Agreement and the Closing Agreements and the consummation by the Buyers of the transactions contemplated hereby and thereby do not and will not (i) violate, conflict with or result in a breach by any Buyer of the certificates of incorporation, bylaws or equivalent organizational documents of any Buyer, (ii) violate, conflict with or result in a breach of, or constitute a default by any Buyer (or create an event which, with notice or lapse of time or both, would constitute a default) under any Contract to which any of the Buyers or any of their respective properties may be bound, (iii) violate or result in a breach of any Order or Law applicable to any Buyer or any of its properties or (iv) except for applicable requirements of the HSR Act and Other Competition Laws, require any Consent of any Governmental Authority; except, with respect to the foregoing clauses (ii), (iii) and (iv) above, as would not, individually or in the aggregate, reasonably be likely to materially impede or delay the ability of any Buyer to consummate the transactions contemplated by this Agreement.

SECTION 4.4. Litigation. There are no Proceedings pending or, to the Buyers' Knowledge, threatened against any Buyer or any of its Subsidiaries that would reasonably be expected to materially impede or delay the ability of any Buyer to consummate the transactions as contemplated by this Agreement. No Buyer is subject to any Order that would reasonably be

expected to materially impede or delay the ability of any Buyer to consummate the transactions as contemplated by this Agreement.

SECTION 4.5. Compliance with Laws; Governmental Authorizations. Neither any Buyer nor any of its Subsidiaries is in violation of any Order or Law applicable to them or any of their respective properties, except where noncompliance would not reasonably be expected to materially impede or delay the ability of any Buyer to consummate the transactions contemplated by this Agreement. Each Buyer and its Subsidiaries have all licenses, permits and other governmental authorizations necessary to conduct their business as currently conducted, except where the failure to have such licenses, permits and other governmental authorizations would not reasonably be expected to materially impede or delay the ability of any Buyer to consummate the transactions contemplated by this Agreement.

SECTION 4.6. Financial Resources. The Buyers have, and will have on the Closing Date, sufficient cash available to pay the Purchase Price and any other amounts payable by the Buyers in connection with the transactions contemplated by this Agreement.

SECTION 4.7. No Brokers' or Other Fees. No broker, finder or investment banker is entitled to any fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Buyers.

SECTION 4.8. No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, neither the Buyers nor any other Person makes any other express or implied representation or warranty to the Sellers.

ARTICLE V

COVENANTS AND AGREEMENTS

SECTION 5.1. Conduct of Business Prior to the Closing.

(a) Without the consent of Buyer Parent, which consent shall not be unreasonably withheld or delayed, as otherwise specifically contemplated by this Agreement, during the Pre-Closing Period, the Sellers shall in respect of the Business, and shall cause the Sold Companies to, (i) conduct the Business in all material respects in the ordinary course consistent with past practice and (ii) use all commercially reasonable efforts to maintain and preserve intact the Business and to maintain satisfactory relationships with suppliers, customers, distributors, key employees and other Persons having material business relationships with the Business.

(b) Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement, during the period from the date of this Agreement through the Closing Date, the Sellers shall not, and shall cause their Affiliates in connection with the Business not to, without the prior written consent of the Buyer, not to be unreasonably withheld or delayed:

(i) (x) sell, assign, lease, transfer or otherwise dispose of any Acquired Assets, or waive or release any rights, other than in the ordinary course of

business consistent with past practice and other than transfers to an Affiliate which is then added to the list of Asset Sellers hereunder, (y) permit, allow or suffer any Assets to be subjected to any Encumbrance (other than Permitted Encumbrances), or (z) sell, assign, transfer, license, pledge, encumber, abandon, fail to maintain or otherwise dispose of any Intellectual Property or other intangible Assets;

(ii) create, incur, assume or guarantee any debt or pay any principal with respect to debt;

(iii) enter into any negotiation in respect of any collective bargaining agreement covering employees or enter into, amend, adopt, terminate, increase the payments to or benefits under, or supplement any Company Group Plan or employment, severance, retirement, termination, profit-sharing, bonus, deferred compensation, savings, insurance, pension, or other agreement or plan, or employment policies for any employees, or make any change in the compensation, severance or termination benefits payable or to become payable to any employees (other than planned annual increases in the rates of compensation in the ordinary course of business consistent with past practice);

(iv) make any change in the key management structure of the Business, including the hiring of additional officers or the termination of existing officers;

(v) fail to maintain all Company Group Plans in accordance with applicable Laws;

(vi) acquire by merging or consolidating with, or by purchasing a substantial portion of the Assets or securities of, or by any other manner, any Person;

(vii) make, incur or authorize any individual capital expenditures or commitment for capital expenditures in excess of $1,000,000, otherwise than in accordance with the capital expenditure plans communicated to the Buyer (but excluding capital expenditures in relation to the facility, or the relocation of the facility, in Wuxi, China);

(viii) reduce or delay any budgeted or planned capital expenditures or fail to make any capital expenditures in the ordinary course of business consistent with past practice (but excluding capital expenditures in relation to the facility, or the relocation of the facility, in Wuxi, China);

(ix) except in the ordinary course of business consistent with past practice, enter into, or amend, terminate or waive any right under, any Material Contract or Lease;

(x) amend any Road Sales & Service Agreement or Shared Sales & Service Agreement or any other distribution, agency or license arrangement;

(xi) make or authorize any change in accounting principles, procedures, methods or practices or in any method of calculating bad debt, contingency or other reserve for accounting or financial reporting purposes;

(xii) make or change any election with respect to Taxes; adopt or change any material accounting method with respect to Taxes; amend any material Tax Return; enter into any private letter ruling, closing agreement or similar ruling or agreement with the IRS or any other Taxing Authority; or settle or compromise any audit or proceeding with respect to a material amount of Taxes owed by the Business;

(xiii) fail to keep current and in full force and effect or renew any material Permits;

(xiv) initiate, compose or settle any litigation or Action affecting the Business or any Acquired Assets or Sold Companies, in each case, involving an amount individually or in the aggregate in excess of $250,000;

(xv) fail to maintain the Assets of the Business in substantially their current state of repair, excepting normal wear and tear, or fail to replace, consistent with Sellers' past practice, inoperable, worn-out or obsolete Assets;

(xvi) change or amend the certificates of incorporation, bylaws or equivalent organizational documents of any of the Sold Companies;

(xvii) intentionally do any other act which would cause any representation or warranty of the Sellers in this Agreement to be or become untrue; or

(xviii) agree to commit or do any of the foregoing.

(c) Notwithstanding the foregoing, Sellers and their Affiliates may take commercially reasonable actions in the conduct and operation of the Business with respect to emergency situations as reasonably determined by the Sellers so long as the Sellers shall, upon receipt of notice of any such actions, promptly inform Buyer of any such actions taken outside the ordinary course of business consistent with past practices.

SECTION 5.2. Access to Books and Records. During the Pre-Closing Period, the Sellers shall, and shall cause the Sold Companies to, afford to the Buyers and their counsel, accountants and other authorized representatives, reasonable access to the officers, directors, management, accountants and other advisors and agents, properties, books, records and Contracts of the Business including, without limitation, access to conduct environmental site assessments, compliance evaluation, invasive, subsurface investigation, testing of any environmental media or building surveys at the Real Property, provided that such access does not interfere with the normal business operations of the Sellers or the Sold Companies. The Sellers shall provide to the Buyers (i) promptly upon availability, the monthly internal financial reports prepared for management of the Business and (ii) within 30 days of the end of each quarter, a combined balance sheet of the Business and related combined income statement of the Business. After Closing, if IR Germany is requested by the German Tax authorities to submit transfer pricing documentation pursuant to Section 90 para 3 of the German General Tax Code

(*Abgabenordnung*) (the "Transfer Pricing Report") the Buyers shall notify the Sellers of this request within 3 Business Days from its receipt and the Sellers shall provide a draft of the Transfer Pricing Report to the Buyers within the later of 50 calendar days following such notice or 5 days prior to any subsequent deadline that may be agreed with the German Tax authorities. The parties agree that the provisions of the Confidentiality Agreement shall continue in full force and effect following the execution and delivery of this Agreement, and all information obtained pursuant to this Section 5.2 shall be kept confidential in accordance with the Confidentiality Agreement. During the Pre-Closing Period, the Sellers shall use commercially reasonable efforts and enquiry to locate and identify to the Buyer (including providing copies thereof) all Contracts involving information technology, computer systems or software of the Business which were not otherwise provided to the Buyer on the date of this Agreement.

SECTION 5.3. Commercially Reasonable Efforts; Regulatory Filings and Consents.

(a) On the terms and subject to the conditions of this Agreement, each party hereto shall use all commercially reasonable efforts to cause the Closing to occur, including taking all commercially reasonable actions necessary to comply promptly with all legal requirements that may be imposed on it or any of its Affiliates with respect to the Closing and to cause all other conditions to be satisfied.

(b) Each of Sellers and Buyers shall (i) as promptly as practicable file with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ") the notification and report form, if any, required for the transactions contemplated hereby and any supplemental information requested in connection therewith pursuant to the HSR Act, (ii) as promptly as practicable make all filings under applicable Other Competition Laws, if any, required for the transactions contemplated hereby, and (iii) as promptly as practicable make all required filings for governmental approval of this Agreement and the transactions contemplated hereby under applicable Laws of the People's Republic of China, India and any other country where a governmental approval is determined to be necessary. Any such antitrust notification and report form or filing and supplemental information shall be in substantial compliance with the requirements of the HSR Act or the applicable Other Competition Laws, as the case may be. All other regulatory filings shall be in substantial compliance with the requirements of applicable Laws. Each of the Buyers and Sellers shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the HSR Act, applicable Other Competition Laws or other applicable Laws and regulations, as the case may be. The Sellers and Buyers shall use all commercially reasonable efforts to comply promptly with any inquiries or requests for additional information from the FTC, the DOJ, other Governmental Antitrust Authorities and any other Governmental Authority having jurisdiction. Each of the Sellers and the Buyers shall use all commercially reasonable efforts to obtain any clearance required under the HSR Act, Other Competition Laws or other applicable Laws and regulations for the consummation of the transactions contemplated by this Agreement.

(c) Subject to any appropriate confidentiality and joint-defense privilege protections, the Sellers and the Buyers shall each furnish to the other such necessary information

and reasonable assistance as the other party may request in connection with the foregoing and shall each promptly provide counsel for the other party with copies of all filings made by such party, all correspondence between such party (and its advisors) with any Governmental Antitrust Authority or other Governmental Authority and any other information supplied by such party and such party's Affiliates to a Governmental Antitrust Authority or other Governmental Authority in connection with this Agreement and the transactions contemplated by this Agreement. Each party shall, subject to applicable Law, permit counsel for the other party to review in advance any proposed written and, if practicable, oral, communication to any Governmental Antitrust Authority or other Governmental Authority.

(d) The filing fees under the HSR Act, Other Competition Laws and other applicable Laws, as well as the fees and disbursements of any legal counsel or other advisor jointly retained by the parties in connection with any such filings and any other filings with Governmental Authorities, shall be borne by the Buyers.

SECTION 5.4. Third Party Consents. The Sellers shall use all commercially reasonable efforts to obtain any Consent ("Third Party Consents") of any Person (other than Governmental Authorities) required to consummate and make effective the transactions contemplated by this Agreement. The Buyers agree to cooperate reasonably with the Sellers in obtaining such Consents. To the extent that the Sellers and the Buyers are unable to obtain any required third party Consents prior to the Closing (such Consents, the "Post-Closing Consents"), each of the Sellers and the Buyers, respectively, shall use all commercially reasonable efforts to make or obtain (or cause to be made or obtained) as promptly as practicable all Post-Closing Consents. For purposes of this Section 5.4, the term "all commercially reasonable efforts" shall not be deemed to require any Person to pay or commit to pay any amount to (or incur any obligation in favor of) any Person from whom any consent or waiver may be required (other than nominal filing or application fees).

SECTION 5.5. Tax Matters.

(a) The Buyers and the Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating directly to the Sold Companies or the Acquired Assets (including access to books and records, employees, contractors and representatives) as is reasonably necessary for the filing of all Tax Returns, the making of any election related to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return; provided, however, that if such requested information is contained within a document containing any unrelated information, only portions pertaining to such relevant information shall be furnished (unless the furnishing of the entire document is required by the relevant Taxing Authority). The Buyers and the Sellers shall retain all books and records with respect to Taxes pertaining to the Sold Companies and the Acquired Assets until the expiration of all relevant statutes of limitations (and, to the extent notified by the Buyers and the Sellers, as the case may be, any extensions thereof). At the end of such period, each party shall provide the other with at least 30 days, prior written notice before destroying any such books and records, during which period the party receiving such notice can elect to take possession, at its own expense, of such books and records.

(b) The Sellers shall prepare, or cause to be prepared, all Tax Returns in respect of the Sold Companies or the Acquired Assets for any taxable period ending on or before the Closing Date in a manner consistent with past practices. Except as provided in the following sentence, the Sellers shall provide the Buyers with a copy of a substantially final draft of each income Tax Return and other material Tax Returns at least 14 Business Days prior to the filing of such Tax Return. Notwithstanding the immediately preceding sentence, (i) in the case of any request to extend the time for filing such Tax Return with the relevant Taxing Authority, such Tax Return shall only be provided to the Buyers within 5 Business Days prior to filing such request and (ii) German VAT returns shall be provided to the Buyers as soon as practicable following completion of such returns. The Sellers shall timely file, or cause to be filed, all such Tax Returns. The Sellers shall timely pay to the relevant Taxing Authority all Taxes due in connection with any such Tax Returns. In advance of the filing of such Tax Returns, the Buyers and the Sold Companies shall pay to the Sellers, the Buyers' and the Sold Companies' share of such Taxes, determined in accordance with Section 5.6, to the extent reflected on the Final Statement of Net Asset Value, provided that the Buyers shall not be obligated to make such payment in advance, but only promptly, if the Sellers failed to deliver copies for review by the Buyers within the applicable time periods specified above. The Buyers shall prepare, or cause to be prepared, all other Tax Returns in respect of the Sold Companies, including for any taxable year ending after the Closing Date which begins before the Closing Date (a "Straddle Period"), in a manner consistent with past practices and on the basis that the relevant taxable period ended as of the close of business on the Closing Date (unless the relevant Taxing Authority will not accept a Tax Return filed on that basis). The Buyers shall provide IR with a copy of a substantially final draft of each Straddle Period Tax Return (and such additional information regarding such Straddle Period Tax Return as may reasonably be requested by IR) for its review and comment (i) at least 14 Business Days prior to the filing of such Tax Return or (ii) in the case of a Tax Return that is required to be filed within 20 days of the Closing Date, at least 10 days prior to the date such Tax Return is required to be filed; provided, that in the case of a Tax Return that is required to be filed within 10 days of the Closing Date, the Buyers shall use their reasonable best efforts to afford the Sellers a reasonable opportunity to review such Straddle Period Tax Return prior to filing such Tax Return. The Buyers shall pay the amount shown to be due on any such Tax Returns. In advance of the filing of such Tax Returns, the Sellers shall pay to the Buyers their share of any such Taxes, determined in accordance with Section 5.6, provided that the Sellers shall not be obligated to make such payment in advance, but only promptly, if the Buyers failed to deliver copies for review by the Sellers within the applicable time period specified above. The Buyers shall timely prepare and file all other Tax Returns in respect of the Sold Companies for any taxable period that begins after the Closing Date, and the Buyers shall timely pay to the relevant Taxing Authority all Taxes due in connection with any such Tax Returns. Buyers acknowledge that from and after the Closing Date the Sellers may not have the power and authority to endorse certain of the refund checks to which they may be entitled and that may be received by the Sellers with respect to Taxes paid by the Sellers for the Tax periods prior to the Closing Date.

(c) Tax Elections.

(i) The Buyers shall not make any Tax election or undertake any restructuring actions under the Code (or the Tax Laws of any other jurisdiction) with respect to the Sold Companies which would cause such stock sale to be treated as an asset

sale for Tax purposes, including, any check-the-box elections or election pursuant to Section 338 of the Code (or any comparable state, local or foreign provision). However, prior to Closing, the Sellers will continue to evaluate whether to permit Buyers to make a Section 338(h)(10) election with respect to Blaw Knox Construction Equipment Corporation, it being understood that, among other considerations, the Sellers willingness to permit such an election will depend upon the Buyers' ability and willingness to ensure that such election has no adverse effects (including financial effects) on Sellers or any of their affiliates. In addition, Buyers shall not, except as required by Law, amend any Tax Return filed with respect to any taxable period (or portion thereof in the case of a Straddle Period) ending on or before the Closing Date, consent to the waiver or extension of the statute of limitations relating to Taxes of the Sold Companies or the Acquired Assets, or compromise or settle any Tax Liability, in each case if such action could have the effect of increasing the Tax liability or reducing any Tax asset of the Sellers in respect of any taxable period (or portion thereof in the case of a Straddle Period) ending on or before the Closing Date, in each case without the Sellers' written consent, such consent not to be unreasonably withheld or delayed.

(d) Prior to the Closing Date, the parties to any tax-sharing agreement (excluding fiscal consolidations under German Law which shall be governed by Section 5.22 herein) between any of the Sold Companies on the one hand and the Sellers and any of their Affiliates on the other hand shall settle any Liabilities under such agreement and shall subsequently terminate such agreement, and no party thereto shall have any Liability thereunder following the Closing Date.

SECTION 5.6. Tax Indemnity.

(a) Subject to the monetary limitations on the Sellers' indemnity obligations as set forth in Section 9.1, the Sellers shall, jointly and severally, indemnify the Buyers and their Affiliates (including the Sold Companies) and each of their respective officers, directors, employees and agents and hold them harmless against (i) all Tax liabilities of the Sellers and their Affiliates (other than the Sold Companies) for any period (but specifically excluding Taxes, if any, imposed on the Sellers and arising out of the Buyers' operation of the Business following the Closing Date), (ii) all Tax liabilities of the Sold Companies or their Affiliates or with respect to the Acquired Assets for all taxable periods (or portions thereof in the case of a Straddle Period) ending on or before the Closing Date except to the extent of the amounts reflected on the Final Statement of Net Asset Value, (iii) all Taxes that are Excluded Liabilities described in Section 2.2(c)(iv) hereof, (iv) all Tax liabilities arising out of or due to any breach of any covenant or other agreement of the Sellers contained in this Agreement, (v) all Tax liabilities arising out of or due to any breach of representations made in Sections 3.11, and (vi) all Liabilities, costs, expenses (including reasonable expenses of investigation and attorneys' fees and expenses), losses, damages, assessments, settlements or judgments arising out of or incident to the imposition, assessment or assertion of any Tax described in clause (i), (ii), (iii), (iv) or (v) above. The Tax indemnity provided under this Section 5.6(a) shall cover any Tax liability of IR Germany or the Buyer resulting from the Sellers' non-compliance with its obligations related to the delivery of a Transfer Pricing Report pursuant to Section 5.22. The Tax indemnity provided under this Section 5.6(a) shall not cover Tax liabilities resulting from any transaction of the Sold Companies outside of the ordinary course of business and not contemplated by this Agreement

that occurs on the Closing Date but after the Closing (and not as a consequence of Closing or any Sold Company ceasing to be associated with any of the Sellers for Tax purposes).

(b) Subject to the provisions set forth in this Agreement, the Buyers, jointly and severally, and the Sold Companies shall indemnify the Sellers and their Affiliates and each of their respective officers, directors, employees and agents and hold them harmless against (i) all Tax liabilities of the Sold Companies or with respect to the Acquired Assets (A) resulting from any transaction of the Sold Companies outside of the ordinary course of business and not contemplated by this Agreement occurring on the Closing Date but after the Closing, (B) with respect to any taxable period (or portions thereof in the case of a Straddle Period) that begins after the Closing Date and that are imposed on or in respect of the Sold Companies or the Acquired Assets, (ii) all Taxes that are Assumed Liabilities described in Section 2.2(b)(vii), (iii) all Tax Liabilities arising out of or due to any breach of any covenant or other agreement of the Buyers contained in this Agreement and (iv) all Liabilities, costs, expenses (including reasonable expenses of investigation and attorneys' fees and expenses), losses, damages, assessments, settlements or judgments arising out of or incident to the imposition, assessment or assertion of any Tax described in clauses (i), (ii) or (iii) above.

(c) For purposes of this Section 5.6, in the case of any Taxes that are imposed on a periodic basis and are payable for a Straddle Period, the portion of such Tax related to the portion of such Straddle Period ending on and including the Closing Date shall (i) in the case of any Taxes other than gross receipts, sales or use taxes and Taxes based upon or related to income, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period ending on and including the Closing Date and the denominator of which is the number of days in the entire taxable period, and (ii) in the case of any Tax based upon or related to income and gross receipts, sales or use taxes, be deemed equal to the amount which would be payable if the relevant taxable period ended on and included the Closing Date. The portion of any credits relating to a Straddle Period shall be determined as though the relevant taxable period ended on and included the Closing Date. All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with the past practice of the Sold Companies.

(d) Payment by the indemnitor of any amount due under this Section 5.6 shall be made within ten Business Days following written notice by the indemnitee that payment of such amounts to the appropriate Taxing Authority is due, provided that the indemnitor shall not be required to make any payment earlier than 5 Business Days before it is due to the appropriate Taxing Authority. In the case of any written notice by any of the Buyers or their Affiliates indicating that Taxes are due for a Straddle Period Tax Return, such notice shall set forth in reasonable detail the calculations regarding the Sellers' share of such Taxes, and if within 10 Business Days after receipt of such notice, the Sellers notify the Buyers in writing that they disagree with the computation of their share of such Taxes, the Sellers and the Buyers shall proceed in good faith to determine the Sellers' share of such Taxes. If the Sellers and Buyers cannot agree in good faith on such share within thirty (30) days after the Sellers' receipt of such notice, the Sellers' share of such Taxes shall be determined pursuant to Section 5.6(f), and the Sellers' payment to the Buyers shall be due three (3) Business Days after the amount payable by the Sellers is determined by agreement between the Sellers and the Buyers or pursuant to Section 5.6(f), subject to the proviso in the first sentence of this Section 5.6(d). In the case of a Tax that

is contested in accordance with the provisions of Section 5.7 below, payment of the Tax to the appropriate Taxing Authority shall not be considered to be due earlier than the date a final determination to such effect is made by the appropriate Taxing Authority or court.

(e) Notwithstanding any provision in this Agreement to the contrary, (i) the representations and warranties set forth in Section 3.11 shall survive until 5:00 p.m. (New York City time) on the third (3rd) anniversary of the Closing Date and (ii) the obligations of a party to indemnify and hold harmless another party pursuant to this Section 5.6, other than, for the avoidance of doubt, pursuant to Section 5.6(a)(v), shall terminate at the close of business on the 30th day following the expiration of the applicable statute of limitations with respect to the Tax liabilities in question (giving effect to any waiver, mitigation or extension thereof); provided, that, in each case, such representations, warranties and obligations shall survive beyond such period with respect to any breach thereof or any claim of indemnity hereunder if written notice thereof shall have been duly given within such period in accordance with the provisions of this Section 5.6.

SECTION 5.7. Procedures Relating to Indemnity of Tax Claims.

(a) The Sellers shall promptly notify the Buyers in writing upon receipt of notice of any pending Tax audits or assessments relating to the Acquired Assets or to income, properties or operations of the Sold Companies. If a claim shall be made against the Buyers or the Sellers, as the case may be, or any of their Affiliates by any Taxing Authority, which, if successful, would result in an indemnity payment to the Buyers or the Sellers, as the case may be, or one of their Affiliates pursuant to Section 5.6(a) or (b) (a "Tax Claim"), the Buyers or the Sellers, as the case may be, shall promptly notify the Sellers or the Buyers, as the case may be, in writing of such Tax Claim stating the nature and basis of such Tax Claim and the amount thereof, to the extent known by the Buyers or the Sellers, as the case may be. If notice of a Tax Claim is not given to the Sellers or the Buyers, as the case may be, within a sufficient period of time to allow the Sellers or the Buyers, as the case may be, to effectively contest such Tax Claim, or in reasonable detail to apprise the Sellers or the Buyers, as the case may be, of the nature of the Tax Claim, in each case taking into account the facts and circumstances with respect to such Tax Claim, the Sellers or the Buyers, as the case may be, shall not be liable to the Buyers or the Sellers, as the case may be, or any of their Affiliates to the extent that the Sellers' or the Buyers', as the case may be, ability to effectively contest such Tax Claim is materially prejudiced as a result thereof.

(b) With respect to any Tax Claim that relates to a taxable period ending on or before the Closing Date or to which Section 5.7(c)(i) applies, the Sellers shall control at their expense all proceedings taken in connection with such Tax Claim (including selection of counsel) and, without limiting the foregoing, may in their sole discretion pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any Taxing Authority with respect thereto and may, in their sole discretion, either pay the Tax claimed and sue for a refund where applicable Law permits such refund suits or contest the Tax Claim in any permissible manner. With respect to any Tax matter covered by the preceding sentence, the Sellers shall keep the Buyers reasonably informed and shall afford the Buyers the opportunity to participate (at Buyer's sole cost and expense), as may be reasonably requested by the Buyers, in any such audit or proceeding to the extent that an adverse determination in any such audit or

proceeding would result in a material Tax liability or a material reduction of any Tax Asset of a Buyer, the Sold Companies or any of their Affiliates, and no such audit or proceeding may be settled or resolved without the written consent of the Buyers, such consent not to be unreasonably withheld or delayed. The Buyers' consent shall be deemed given in the absence of the Sellers' receipt of the Buyers' response within 7 Business Days of the consent having been requested in writing by the Sellers.

(c) Buyers shall have the right to control the conduct of any Tax Claim that relates to a Straddle Period, provided that if the matter (i) relates to Taxes for which the Sellers could be subject to Liability under Section 5.6 and which Liability is greater than the amount of Taxes Buyers would be responsible for in respect of such Straddle Period, then Sellers shall have the right to control such matters as specified in Section 5.7(b), or (ii) relates to Taxes for which the Sellers could be subject to Liability under Section 5.6 but which is not covered by clause (i) herein, the Buyers shall not, without the prior written consent of the Sellers (such consent not to be unreasonably withheld or delayed), agree or consent to compromise or settle, either administratively or after the commencement of litigation, any issue or claim arising in such proceeding, or otherwise agree or consent to any Tax liability. The Sellers' consent shall be deemed given in the absence of the Buyers' receipt of the Sellers' response within 7 Business Days of the consent having been requested in writing by the Buyers.

(d) The parties agree to act in good faith with respect to the prosecution and defense of any audit, Tax Claim or other proceeding arising hereunder, including without limitation, timely responding to any notices or reasonable requests received from the other party.

SECTION 5.8. Refunds and Tax Benefits. Any Tax refunds that are received by the Buyers, or the Sold Companies, and any amounts credited against Tax (including any offsetting adjustments in connection with any audits, examinations or Tax proceedings) to which the Buyers or the Sold Companies become entitled, that relate to Excluded Assets or Excluded Liabilities or to taxable periods (or portions thereof in the case of a Straddle Period) ending on or before the Closing Date shall be for the account of the Sellers, except to the extent that amounts in respect of the right to such refund are reflected (either as an Asset or in reducing a Liability) in the Final Statement of Net Asset Value, and the Buyers shall pay over to the Sellers the net amount (after taking into account any costs or expenses of the Buyers or the Sold Companies relating to the receipt thereof) of any such refund or any such credit within 15 days after the receipt or entitlement thereto. The Buyers agree that they shall not, without the Sellers' consent (such consent not to be unreasonably withheld), cause or permit the Sold Companies to carryback to any taxable period ending on or prior to the Closing Date any net operating loss, loss from operations or other Tax attribute, and further agree that the Sellers have no obligation under this Agreement to return or remit any refund or other Tax benefit attributable to a breach by the Buyers of the foregoing undertaking. Any Tax refunds that are received by the Sellers and any amounts credited against Tax to which the Sellers become entitled, that relate to taxable periods (or portions thereof in the case of a Straddle Period) ending after the Closing Date (except to the extent that amounts in respect of the right to such refund were paid by the Sellers) shall be for the account of the Buyers, and the Sellers shall pay over to the Buyers the net amount (after taking into account any costs or expenses of the Sellers relating to the receipt thereof) of any such refund or any such credit within 15 days after receipt or entitlement thereto.

SECTION 5.9. Employees; Benefit Plans.

(a) Employees and Offers of Employment.

(i) The Sellers and Buyers agree to cooperate reasonably during the period prior to the Closing Date to ensure the continuity of the workforce of the Business. In furtherance thereof, prior to, or in connection with, the Closing, the Buyers shall take no action to cause the Sellers or the Sold Companies to terminate the employment of any Business Employee, and the Sellers and the Sold Companies shall be under no obligation to terminate any Business Employee prior to, or on the Closing Date. Prior to the Closing Date, one or more of the Buyers shall offer employment to each Business Employee (other than an employee of the Sold Companies, all of whom shall continue employment with such Sold Company as of the Closing Date by operation of Law) who is either actively employed by a Seller as of the Closing Date or is absent from work as of the Closing Date by reason of any leave of absence (including, without limitation, vacation, injury, sick leave, long-term disability, short-term disability, maternity leave, military service or other leave of absence from which an employee's return to active employment is protected by Law or Order). Schedule 5.9(a)(i) sets forth each Business Employee who is on an authorized leave of absence.

(ii) Such offers of employment described in Section 5.9(a)(i) shall include an offer of base salary (or wages), commission rates (if applicable) and target annual cash bonus opportunity (exclusive of any stay bonuses, success bonuses and similar arrangements of IR, any Seller or Sold Company or any Affiliate of any of them in connection with the transactions contemplated herein and any equity, phantom equity or other equity -based compensation plan, including the Performance Share Plan) that, in the aggregate (subject to applicable laws, works council and collective bargaining agreements), are not less than as in effect with respect to such Business Employee immediately prior to the Closing Date, and otherwise shall be consistent with this Section 5.9 and, except for Business Employees whose principal work location is the subject of an eminent domain proceeding commenced by the People's Republic of China, shall not require any Business Employee to relocate to a work location more than 20 miles from such Business Employee's work location during the one year period following the Closing. As of the Closing Date or, with respect to any Business Employee on an authorized leave of absence, as of the date such Business Employee commences active employment with the Buyers or returns to active employment with a Sold Company, each Business Employee who accepts Buyers' offer of employment and each employee of the Sold Companies (herein collectively referred to as "Transferred Employees") shall become an employee of one or more of the Buyers (or the Sold Companies, as applicable). During the one year period from and after the Closing, the Buyers shall provide to the Transferred Employees overall employee benefits (exclusive of any stay bonuses, success bonuses and similar arrangements of IR, any Seller or Sold Company or any Affiliate of any of them in connection with the transactions contemplated herein and any equity, phantom equity or other equity-based compensation arrangements, including the Performance Share Plan) that are no less favorable, in the aggregate, than those provided on average to Transferred Employees immediately prior to the Closing Date. Notwithstanding anything herein to the contrary, this Agreement shall not alter the at-will

nature of any Transferred Employee's employment. Nothing in this Agreement shall restrict, limit or interfere with the ability (after the Closing) of the Sellers, Buyers or their respective Affiliates to terminate, amend or replace any particular agreement, plan or program (including, without limitation, salaries (or wages), commission rates and bonus opportunities), to alter the terms and conditions of employment or terminate the employment of any person, provided that the requirements of this Section 5.9 are otherwise satisfied.

(b) Prior Service; Deductibles. The Buyers shall, or shall cause their respective Affiliates to, recognize each Transferred Employee's service with the Sellers, the Sold Companies, or any of their respective Affiliates or their respective predecessors as of the Closing Date as service with the Buyers, the Sold Companies or any of their respective Affiliates, as applicable, for all purposes (including, without limitation, eligibility, vesting, eligibility waiting periods, benefit accruals) to the extent that such service was credited for such purpose under a comparable plan of the Sellers, the Sold Companies or any of their respective Affiliates in the Buyers', the Sold Companies' or any of their respective Affiliates' employee benefit plans, agreements, policies or other arrangements (unless such credit would result in a duplication of benefits for the same period). In addition, to the extent pre-existing condition limitations have been met or are otherwise inapplicable with respect to Transferred Employees under Sellers' employee welfare benefits plans as of the Closing Date, the Buyers shall, or shall cause their respective Affiliates to, waive any such pre-existing condition limitations under Buyers' employee welfare benefit plans applicable to Transferred Employees or their respective spouses or dependents and shall recognize (or cause to be recognized) the dollar amount of all expenses incurred by Transferred Employees and their respective spouses or dependents during the calendar year in which the Closing occurs for purposes of satisfying the deductibles and co-payment or out-of-pocket limitations for such calendar year under the relevant employee welfare benefit plans of the Buyers, the Sold Companies and their respective Affiliates, as applicable, to the extent taken into account for such purpose under a comparable plan of the Sellers, the Sold Companies or any of their Affiliates. Sellers shall be solely responsible for the administration of, and all costs and Liabilities arising in connection with, medical (including dental, vision, mental health and prescription drug) benefits claims by Transferred Employees (other than Business Employees of the Sold Companies) and their spouses, dependents or other beneficiaries incurred on or prior to the Closing Date, without regard to whether such claims are submitted prior to, on or after the Closing Date.

(c) Accrued Vacation/Repatriation/Relocation.

(i) The Buyers shall, or shall cause their respective Affiliates to, credit each Transferred Employee with the accrued and unused vacation days and any personal and sickness days accrued in accordance with the vacation and personnel policies and labor agreements of the Sellers, the Sold Companies, the Asset Sellers, the Stock Sellers or any of their respective Affiliates in effect as of the Closing.

(ii) Effective as of the Closing and continuing until December 31, 2007, the Buyers expressly agree to honor, and to cause their Affiliates and the Sold Companies to honor, with respect to the Transferred Employees listed on Schedule

5.9(c)(ii) the repatriation and relocation programs, policies and agreement set forth in Schedule 5.9(c)(ii).

(d) Severance Obligations.

(i) The Sellers shall be responsible for any and all liabilities associated with each Business Employee who declines Buyers' offer of employment, excluding any employee of the Sold Companies or any employee otherwise transferred to the Buyers by operation of Law (which employees shall be the sole obligation of the Buyers) (the "Non-Transferring Employees").

(ii) Effective as of the Closing and continuing until the first anniversary of the Closing, the Buyers shall, or shall cause their respective Affiliates to, provide Transferred Employees severance benefits that are no less favorable than the severance benefits provided under the terms of the Seller's plans identified on Schedule 5.9(d)(ii) as in effect immediately prior to the date hereof. Notwithstanding the foregoing, the Sellers shall reimburse the Buyers for the amount (the "Excess Amount") equal to the excess of (I) the severance benefits to be paid or provided to any Transferred Employee pursuant to this Section 5.9(d)(ii) in connection with his or her termination of employment by Buyers over (II) the severance benefits, if any, that would otherwise be paid or provided to such individual under the terms of Buyers' applicable severance plan (calculated without regard to the requirements of this Section 5.9(d)(ii)). The Buyers shall provide the Sellers with one or more invoices for the Excess Amount as and when such amounts become due, together with such supporting documentation as the Sellers shall reasonably request. The Sellers shall pay each such invoice within ten (10) Business Days after receipt of such invoice and supporting documentation (or, in the event of a good faith dispute over the amount of the invoice, within ten (10) Business Days after such dispute is resolved). For the avoidance of doubt, if there is no obligation under Buyers' applicable severance plans in connection with any such Transferred Employee's termination of employment, including where such Transferred Employee does not execute any release required as a condition under the applicable plan of Buyers, the amount determined under clause (II) above shall be zero.

(e) Annual Incentive Matrix Bonus; Performance Share Plan Award; and Success Bonus.

(i) No later than 90 days after the Closing, Sellers shall prepare, or cause to be prepared, a statement (the "AIM Calculations Statement") containing Sellers' determination of (A) the amount (the "AIM Program Payment Amount") equal to the pro rata portion as of 11:59 P.M. local time on the Closing Date of the annual bonuses payable to Transferred Employees pursuant to the Annual Incentive Matrix Bonus Program for the calendar year 2007 as in effect on the date hereof (the "AIM Program"), determined in accordance with the terms of the AIM Program and based upon financial performance and/or results determined by Sellers and employee performance determined by the Sellers and (B) the federal, state, local and foreign payroll and other similar Taxes other than Social Security Taxes payable by the Buyers as a result of the payment to Transferred Employees of bonuses under the AIM Program in the amount of AIM

Program Payment Amount (the "Payroll Tax Amount"). Upon final determination of the AIM Program Payment Amount and the Payroll Tax Amount pursuant to this Section 5.9(e)(i), but in no event more than three (3) business days thereafter, Sellers shall pay by wire transfer of immediately available funds to an account or accounts which are designated by Buyers not more than two (2) business days following Sellers' notice to Buyers of such final determination, cash in an amount equal to: (a) the AIM Program Payment Amount plus (b) the Payroll Tax Amount. The amount of the AIM Program Payment Amount wired by the Sellers to the Buyers shall be used exclusively for the purpose of providing payment to each Transferred Employee of his or her allocated amount under the AIM Program. For the avoidance of doubt, the Final Statement of Net Asset Value shall not include any provision or accrual for any AIM bonus amount.

(ii) The Sellers shall bear the cost of any written "success bonus" agreement by and between the Sellers and any Business Employee as listed in Schedule 5.9(e) and any other transaction bonus, "success bonus" or similar arrangement whereby payment is triggered by the transactions contemplated hereby, and shall ensure that such bonuses are paid in accordance with their terms in effect as of the Closing Date.

(iii) The Sellers shall be solely responsible for all payments and costs under the Performance Share Plan and any stock option or other equity, phantom equity or equity-based compensation plan of Sellers or any of its Affiliates and shall be solely responsible for all obligations thereunder with respect to awards granted to Business Employees.

(f) Defined Benefit Plan.

(i) As soon as practicable after the Closing, the Sellers shall cause the trustees of the Ingersoll-Rand Pension Plan Number One ("Pension Plan One" or "PPO") and the trustees of the Retirement Plan for Former Employees of Ingersoll-Rand Company ("Former Employees Retirement Plan" or "FERP") (collectively, "Sellers Defined Benefit Plans") to segregate and transfer to a successor pension plan or plans of the Buyers, or one of their designated Affiliates, in accordance with the spinoff provisions set forth under Section 414(l) of the Code, assets in a form mutually acceptable to both Sellers and Buyers equal to the PPO Transfer Amount and the FERP Transfer Amount (each as defined below), and shall make any and all filings and submissions to the appropriate Governmental Authority arising in connection with such segregation and transfer of Assets and all necessary amendments to Sellers Defined Benefit Plans and related trust agreement to provide for the segregation of Assets and transfer of Assets as described below. As soon as practicable after the Closing, the Buyers, or one of their designated Affiliates, shall establish or designate a defined benefit pension plan or plans for the benefit of Transferred Employees and Former Employees of the Business covered by Sellers Defined Benefit Plans and shall make any and all filings and submissions to the appropriate Governmental Authority required or desired to be made by it in connection with the transfer of Assets described below.

(ii) The amount of such Assets to be transferred in accordance with paragraph (i) above with respect to Pension Plan One (the "PPO Transfer Amount") shall

be (x) as of the Closing Date, the benefits of Transferred Employees and Former Employees from the PPO valued on an accumulated benefit obligation ("ABO") basis in accordance with U.S. generally accepted accounting principles, using the assumptions and methodology set forth in Schedule 5.9(f)(ii) or such greater amount as is required to satisfy the provisions of Code Section 414(l) as certified by the actuary to Buyers and agreed to by the actuary to Sellers, plus (y) interest at the rate of 5% per annum on such amount for the period between the Closing Date and the date of such transfer.

(iii) The Transfer Amount with respect to the Former Employees Retirement Plan (the "FERP Transfer Amount") shall be (X) as of the Closing, the benefits of Former Employees from the FERP, valued on an ABO basis, in accordance with U.S. generally accepted accounting principles, using the assumptions and methodology set forth in Schedule 5.9(f)(ii) or such greater amount as is required to satisfy the provisions of Code Section 414(l) as certified by the actuary to Buyer and agreed to by the actuary to Sellers, plus (Y) Interest on such amounts at the rate of 4% per annum for the period between the Closing Date and the date of such transfer.

(iv) In consideration for the transfer of Assets described herein, the Buyers shall, effective as of the date of transfer of such Assets, to the extent of the value of the Assets transferred, assume all of the obligations of the Sellers, Asset Sellers, Stock Sellers, and any of their respective Affiliates and the Buyers shall cause the successor pension plans described in Section 5.9(f)(i) above, as of the date of transfer of the Assets, to the extent of the value of the Assets transferred, to assume all of the obligations of Sellers Defined Benefit Plans, in each case, in respect of benefits accrued by the Transferred Employees and Former Employees under Sellers Defined Benefit Plans on or prior to the Closing Date (exclusive of benefits paid prior to the date of transfer of the pension Assets to the successor pension plan). The Buyers shall not assume any Sellers Defined Benefit Plan or any other obligations or Liabilities arising under or attributable to the Sellers Defined Benefit Plans.

(v) Effective as of the Closing Date and to the extent permitted by the terms of the applicable plan or at the time otherwise due under the applicable plan,, Sellers shall or shall cause one of their Affiliates to distribute to or on behalf of each Transferred Employee and Former Employee all benefits accrued on behalf of such Transferred Employee under the Ingersoll-Rand Company Key Management Supplemental Programs and the Ingersoll-Rand Company Supplemental Pension Plans in accordance with the terms thereof, and the Sellers shall be solely responsible for all Liabilities and obligations under such plans.

(g) Defined Contribution Plans.

(i) Effective as of the Closing Date, the active participation of each Transferred Employee and Former Employee in the Ingersoll-Rand Company Employee Savings Plan (the "Seller 401(k) Plan") and the I-R/Clark Leveraged Employee Stock Ownership Plan (the "Seller LESOP") (collectively, the "Seller Defined Contribution Plans") shall cease. Each Transferred Employee and Former Employee (including any beneficiary or any "alternate payee" as described in Section 414(p) of the Code) shall, to

the minimum extent required by the terms of the Seller Defined Contribution Plans, be given the option to receive a complete distribution of his or her account balance(s), in accordance with Section 401(k) of the Code and the regulations promulgated thereunder. If a Transferred Employee or Former Employee does not elect to receive a distribution of his or her account balance(s), then such account balance(s) will be transferred in accordance with Section 5.9(g)(ii) below.

(ii) As soon as practicable after the Closing, the Buyers shall establish or designate one or more defined contribution plans to receive the transfer of account balances from Seller Defined Contribution Plans, and shall make any and all filings and submissions to the appropriate Governmental Authority required to be made by it in connection with the transfer of Assets described below. As soon as practicable following the earlier of the delivery to the Sellers of a favorable determination letter from the Internal Revenue Service regarding the qualified status of such successor defined contribution plan as amended to the date of transfer, or delivery of an opinion of counsel to Buyers reasonably satisfactory to the Sellers that the terms of the successor defined contribution plan are drafted with the intent to satisfy the applicable requirements of Section 401 of the Code, the Seller shall cause the trustee of the Seller Defined Contribution Plans to transfer in the form of cash or, at the Buyer's option, in kind (except with respect to loans to Transferred Employees, which shall be transferred in kind) the full account balances (inclusive of such loans) of all Transferred Employees and Former Employees, which account balances shall have been credited with applicable earnings and contributions, if any, attributable to the period ending on the close of business of the day preceding the transfer date, reduced by any benefit or withdrawal payments in respect of Transferred Employees and Former Employees prior to the transfer date, to the trustee of the successor defined contribution plan.

(iii) In consideration of the transfer of Assets hereunder, the Buyers shall, to the extent of the value of the Assets transferred, effective as of the transfer date described in Section 5.9(g)(ii) above, assume all of the obligations of Seller and any of its Affiliates, and the Buyers shall cause the successor defined contribution plan described in Section 5.9(g)(ii) above, effective as of the transfer date, to the extent of the value of the Assets transferred, to assume all of the obligations of the Seller Defined Contribution Plans, in each case, in respect of account balances of Transferred Employees and Former Employees under the Seller Defined Contribution Plans (exclusive of any portion of such account balances which are paid or otherwise withdrawn prior to the transfer date). The Buyers shall not assume any Seller Defined Contribution Plan or any other obligations or Liabilities arising under or attributable to the Seller Defined Contribution Plans.

(iv) Effective as of the Closing Date and to the extent permitted by the terms of the applicable plan or at the time otherwise due under the applicable plan,, Sellers shall or shall cause one of their Affiliates to distribute to or on behalf of each Transferred Employee all benefits accrued on behalf of such Transferred Employee under the IR Executive Deferred Compensation Plan, the IR Executive Deferred Compensation Plan II, Management Incentive Unit Plan of Ingersoll-Rand Company, and the Ingersoll-Rand Company Supplemental Employee Savings Plans in accordance with the terms

thereof, and the Sellers shall be solely responsible for all obligations and Liabilities under such plans.

(h) Retiree Welfare Benefits.

(i) Effective as of the Closing, the Buyers shall assume, or cause one of their Affiliates to assume, Liability to provide (x) retiree medical and life insurance benefits to Former Employees and their eligible dependents (if any) who are receiving retiree welfare benefits under Ingersoll-Rand Company Health and Welfare Benefit Plan, as amended and restated, General Funds (Supplements) for Employees of Ingersoll-Rand, General Funds (Supplements) for Employees of Clark Equipment Company and Ingersoll-Rand Canada, Inc. Postretirement Life and Health Care Benefit Plans as of the Closing Date, and (y) retiree medical benefits to Transferred Employees and their eligible dependents (if any) who either would be eligible to receive such benefits if he or she retired on or before the Closing Date or, as of January 1, 2003, whose combined age and years of service with the Sellers equaled or exceeded 50 and such Transferred Employee otherwise would satisfy the eligibility requirements for retiree medical benefits under the Ingersoll-Rand Company Health and Welfare Benefit Plan at time of termination with the Buyers, in each case of (x) and (y) under the written terms of such plans as delivered to Buyers as of the Closing Date. Effective as of the Closing Date, the Sellers, the Sold Companies and their Affiliates shall assign and transfer to Buyers all of their Assets, rights, title, property and interests with respect to the Business Employees and Former Employees under and in respect of the plans identified in this Section 5.9(h)(i). Sellers shall be solely responsible for the administration of, and all costs and Liabilities arising in connection with, medical (including dental, vision, mental health and prescription drug) benefits and other health, disability, life insurance or welfare or fringe benefits or expense reimbursement claims by Transferred Employees and Former Employees (other than Business Employees of the Sold Companies) and their spouses, dependents or other beneficiaries which relate to or are based upon an occurrence on or before the Closing Date (including claims with respect to continuing treatment in respect of any illness, accident, disability, condition or other event which occurs or commences on or prior to the Closing Date), irrespective of whether such claims are submitted or asserted prior to, on or after the Closing Date.

(ii) With respect to the retiree welfare benefits described in Section 5.9(h)(i) above, during the period from the Closing Date through December 31, 2009, the Buyers shall, and shall cause their Affiliates to, provide retiree welfare benefits no less favorable than those provided on the Closing Date under the terms of the plans specified in Section 5.9(h)(i) to those Former Employees (and their eligible dependents) who are receiving such benefits as of the Closing and to those Transferred Employees (and his or her eligible dependents) who would be eligible for such benefits if such eligible Transferred Employee retired on the Closing Date or, as of January 1, 2003, whose combined age and years of service with the Sellers equaled or exceeded 50 and such Transferred Employee would otherwise satisfy the eligibility requirements for such benefits under the Ingersoll-Rand Company Health and Welfare Benefit Plan at time of termination with the Buyers.

(i) IR Employment Agreements. Subject to Section 5.9(e), the Buyers shall assume and be responsible for all obligations arising under the agreements with certain Transferred Employees set forth in Schedule 5.9(i).

(j) Flexible Benefits. The Buyers shall establish, as of the Closing, dependent care and medical expense reimbursement accounts with the vendor of Buyer's choice (such newly established accounts, the "Buyer's Flexible Account Plan"). To the extent Transferred Employees contributed to a dependent care or medical expense reimbursement account under a U.S. Company Group Plan ("IR's Flexible Account Plan") during the plan year that includes the Closing, the Sellers shall transfer to the Buyer's Flexible Account Plan the account balances under IR's Flexible Account Plan of such Transferred Employees for such plan year, and the Buyers shall provide benefits under the Buyer's Flexible Account Plan that are no less favorable than those provided under IR's Flexible Account Plan to such Transferred Employees at least through the end of the plan year in effect as of the Closing. The Buyers shall be responsible for all Liability for and administration of eligible reimbursement claims on behalf of Transferred Employees (and their dependents and beneficiaries) for covered expenses incurred in respect of the plan year that includes the Closing (and that are not subject to reimbursement from a prior plan year account under IR's Flexible Benefits Plan) that have not been received by the Sellers as of the date the Sellers transfer Assets to the Buyers from IR's Flexible Account Plan.

(k) COBRA. The Sellers shall be responsible for all legally mandated continuation of health care coverage for any Business Employee or Former Employee and his or her covered dependents who participated in a U.S. Company Group Plan and who had or have a loss of health care coverage due to a qualifying event occurring prior to the Closing Date and for any Business Employee who refuses Buyer's offer of employment (exclusive of Business Employees of any Sold Company). The Buyers shall be responsible for all legally mandated continuation of health care coverage for all Transferred Employees and any of their covered dependents who have a loss of health care coverage due to a qualifying event occurring following the Closing.

(l) International Pension Plans. Subject to other provisions of this Section 5.9, the allocation of Liabilities arising under any Non-U.S. Company Group Plan that is a pension plan (an "International Pension Plan") and the transfer of any Assets thereunder shall be made subject to and in accordance with the following:

(i) With respect to any funded International Pension Plan sponsored or maintained by any Asset Seller, or one of their Affiliates that is not a Sold Company (a "Seller International Pension Plan"), effective as of the Closing, the Buyer shall designate or create funded pension benefit plans (a "Buyer International Pension Plan") with respect to each country in which Transferred Employees shall be working that are substantially identical to the funded Seller International Pension Plan applicable to Transferred Employees in such countries and which replicate the benefits, features and rights of such Seller International Pension Plan.

(ii) Effective as of the Closing Date, the Buyers, or one of its Affiliates, shall assume all Liabilities under each non-funded Seller International Pension

Plan with respect to Transferred Employees and Former Employees and their beneficiaries and dependents.

(iii) With respect to each funded Seller International Pension Plan, following the Closing, the Buyers, or one of their Affiliates, will request from the trustee or independent pension board that administers such plan a transfer to the corresponding Buyer International Pension Plan of Assets and Liabilities related to Transferred Employees and Former Employees, and their beneficiaries and dependents; provided and to the extent the Buyers have obtained from each such Transferred Employee or Former Employee or beneficiaries and dependents (if applicable) any required consent and furnished a copy of such consent to the Seller and to the appropriate trustee or independent pension board.

(iv) Unless otherwise required under local Laws, the transfer of Assets from Seller International Pension Plan to Buyer International Pension Plan shall be made in an amount not less than the accumulated benefit obligation of such plans as of the Closing with respect to Transferred Employees and Former Employees or their beneficiaries and dependents using the same assumptions and methodology set forth in Schedule 5.9(l)(iv).

(m) Sold Companies/Other Liabilities.

(i) Except as provided to the contrary in this Section 5.9 and except with respect to Excluded Liabilities, the Sold Companies shall retain all Assets, property, rights, title, interests and privileges of the Sold Companies in respect of employees, consultants and employee benefits, including those under each Contract, Collective Bargaining Agreement and Company Group Plan (including any trust, insurance Contract or other funding arrangement thereunder) and all Liabilities related to and in connection with employees and employee benefits of the Sold Companies.

(ii) The Buyers shall not assume any U.S. Company Group Plan, and, except as expressly provided to the contrary in this Section 5.9, the Buyers shall not assume any Liability under or in respect of any U.S. Company Group Plan. To the extent consistent with the foregoing provisions of this Section 5.9, the Buyers shall assume and be responsible for all Assets and Liabilities not specifically described above in respect of Transferred Employees and Former Employees to the extent of the amounts reflected on the Final Statement of Net Asset Value.

(n) Update to Employee Schedule. Prior to the Closing and on a date to be agreed as between IR and Buyer Parent, Sellers shall provide to Buyers a revised Schedule 1.2 setting forth, as of the most recent date practicable, each Business Employee. Upon Buyer Parent's approval of any Business Employees added to Schedule 1.2, which approval shall not be unreasonably withheld or delayed, such list shall be the definitive list of Business Employees for all purposes of this Agreement.

(o) Third Party Beneficiaries.

(i) Notwithstanding the foregoing, nothing contained herein, whether express or implied, shall be treated as an amendment or other modification of any Company Group Plan or any employee benefit plan, program or arrangement maintained by Buyers or any of its Affiliates (each, a "Buyer Benefit Plan") or shall limit the right of the Buyers and the Sold Companies or any of their Subsidiaries or Affiliates to amend, terminate or otherwise modify any Buyer Benefit Plan or other employee benefit plan, program or arrangement following the Closing Date. In the event that (i) a party other than the parties hereto makes a claim or takes other action to enforce any provision in this Agreement as an amendment to any such Company Group Plan or Buyer Benefit Plan, and (ii) such provision is deemed to be an amendment to such Company Group Plan or Buyer Benefit Plan even though not explicitly designated as such in this Agreement, then such provision shall lapse retroactively and shall have no amendatory effect.

(ii) The parties hereto acknowledge and agree that all provisions contained in this Section 5.9 with respect to current employees and Former Employees of the Business are included for the sole benefit of the parties to this Agreement, and that nothing in this Agreement, whether express or implied, shall create any third party beneficiary or other rights (x) in any other Person, including, without limitation, any Business Employees, former employees of the Business, any participant in any Company Benefit Plan, or any dependent or beneficiary thereof, or (y) to employment or continued employment with Buyer, Sold Companies or any of their respective Affiliates.

SECTION 5.10. Labor Matters.

(a) The Buyers shall not, at any time prior to 90 days after the Closing Date, effectuate a "Plant Closing" or "Mass Layoff", as those terms are defined in the WARN Act, affecting in whole or in part any site of employment, facility or operating unit with respect to the Business, and regardless whether the employment losses occur before or after the Closing Date. The Sellers agree that between the date hereof and the Closing Date, they will cause the Sold Companies and the Asset Sellers in respect of the Business not to effect or permit a "Plant Closing" or "Mass Layoff" as these terms are defined in the WARN Act without notifying the Buyers in advance and without complying with the notice requirements and all other provisions of the WARN Act.

(b) The Buyers shall cooperate in connection with any required notification to, or any required consultation with, the employees, employee representatives, work councils, unions, labor boards and relevant government agencies concerning the transactions contemplated hereby with respect to the employees of the Sold Companies and the Business.

(c) A breach by the Buyers or the Sellers of their respective obligations under this Section shall give rise to an obligation by the breaching party to indemnify, defend and hold harmless the non-breaching party from and against any and all damages incurred thereby or caused thereto under or pursuant to the WARN Act based on, arising out of, resulting from or relating to any act or omission to act by or of the breaching party.

SECTION 5.11. Contact with Customers and Suppliers. During the Pre-Closing Period, the Buyers and the Sellers shall cooperate in communicating with Sellers' customers,

suppliers and licensors concerning the transactions contemplated hereby, including Buyers' intentions concerning the operation of the Business following the Closing. During the Pre-Closing Period, the Buyers and their representatives shall contact or communicate with the customers, suppliers and licensors of the Business in connection with the transactions contemplated hereby only with the prior written consent of the Sellers, which shall not be unreasonably withheld or delayed and may be conditioned upon a designee of the Sellers being present at any meeting or conference. For the avoidance of doubt, nothing in this Section 5.11 shall prohibit Buyers from contacting the customers, suppliers and licensors of the Business in the ordinary course of Buyers' businesses for the purpose of selling products of the Buyers' businesses or for any other purpose unrelated to the Business and the transactions contemplated by this Agreement.

SECTION 5.12. Non-Competition; Solicitation.

(a) Restrictions on Competing Activities Following Closing:

(i) Each of the Sellers agrees that from the Closing until the fifth anniversary of the Closing, they will not, and they shall ensure that each of the Sellers' Affiliates (other than the Sold Companies) will not, directly or indirectly engage or invest in any business in competition with the Business as conducted immediately prior to the Closing. Notwithstanding the foregoing, this Section 5.12(a) shall not prohibit (i) the Sellers, directly or through any Affiliate, from conducting any business activities conducted by them as of the date of this Agreement (other than the Business), including the business activities of all IR company stores retained by Sellers (provided that any Business activities conducted by such retained IR company stores shall always be conducted in accordance with the terms of the IRES Sales & Service Agreements), and the business activities required of the Sellers pursuant to the Closing Agreements and pursuant to this Agreement; (ii) Sellers, directly or through any Affiliate, from investing in or holding not more than 10% of the outstanding capital stock or other ownership interests of any Person; (iii) the Sellers, directly or through any Affiliate, from hereafter acquiring and continuing to own and operate any entity which has operations that compete with the Business if such operations account for no more than 25 % of such acquired entity's consolidated revenues at the time of such acquisition; and (iv) the Sellers, directly or through any Affiliate, from selling Inventory or other Assets then owned by any Seller.

(ii) Each of the Buyers agrees that from the Closing until the second anniversary of the Closing, it will not utilize the Business, its Assets or products to compete with the Sellers' business of manufacturing and selling material handling equipment in Europe, Asia and Africa, as conducted immediately prior to the Closing. However, this covenant shall not prohibit the Buyers from acquiring any third party business, nor shall Buyers be responsible for the activities of the Buyers' independent distributors.

(iii) For a period of two (2) years from the Closing Date, each of the Sellers agree that they will not, and they will cause their Affiliates not to, directly or indirectly, in any capacity and either separately, jointly or in association with others:

(A) request, induce or attempt to influence any of the Business Employees to terminate his or her employment with or service to the Buyers or any Sold Company or their Affiliates;

(B) attempt to dissuade any Business Employee from continuing employment with the Buyers or the Sold Companies or their Affiliates, as the case may be; or

(C) hire or employ or solicit the employment of, or make or extend any offer of employment to, or otherwise any Business Employee who is then employed by Buyers or the Sold Companies or their Affiliates, or any Person who is covered by the immediately following sentence. The restrictions of clause (C) of this Section 5.12(iii) shall cease to apply to a Business Employee six (6) months after the later of (x) the date of termination of his or her employment with the Buyer, the Sold Companies and their Affiliates and (y) the last date on which such Business Employee receives severance or other termination payments from the Buyer, any Sold Company or any of their Affiliates.

The foregoing notwithstanding, it shall not constitute a violation of Section 5.12(a)(iii) for the Sellers or their Affiliates to make a non-targeted placement search or to place a general solicitation for employment or other services in a newspaper, other periodical or on the internet or for any of the Sellers or their Affiliates to hire a former employee of the Business pursuant to such non-targeted placement search, general solicitation or pursuant to a preexisting contractual arrangement; provided that none of the Key Employees (as defined in Section 5.12(f)) shall be solicited by IR or any of its Affiliates or their respective agents or representatives, pursuant to, or hired by IR or any of its Affiliates as a result of, any such non-targeted placement search.

(iv) For a period of two (2) years from the Closing Date, each of the Buyers agree that they will not, and they will cause their Affiliates not to, directly or indirectly, in any capacity and either separately, jointly or in association with others:

(A) request, induce or attempt to influence any of the employees of the IR company stores retained by the Sellers to terminate his or her employment with or service to the Sellers or their Affiliates;

(B) attempt to dissuade any of the employees of the IR company stores retained by the Sellers from continuing employment with the Sellers or their Affiliates, as the case may be; or

(C) hire or employ or solicit the employment of, or make or extend any offer of employment to, any employee of the IR company stores retained by the Sellers who is then employed by Sellers or their Affiliates, or any Person who is covered by the immediately following sentence. The restrictions of clause (C) of this Section 5.12(iv) shall cease to apply to an employee of

the IR company stores retained by the Sellers six (6) months after the later of (x) the date of termination of his or her employment with the Sellers and their Affiliates and (y) the last date on which such individual receives severance or other termination payments from the Sellers or any of their Affiliates.

The foregoing notwithstanding, it shall not constitute a violation of Section 5.12(a)(iv) for the Buyers or their Affiliates to make a non-targeted placement search or to place a general solicitation for employment or other services in a newspaper, other periodical or on the internet or for any of the Buyers or their Affiliates to hire a former employee of the IR company stores retained by the Sellers pursuant to such non-targeted placement search, general solicitation or pursuant to a preexisting contractual arrangement.

(b) The parties mutually agree that this Section 5.12 is reasonable and necessary to protect and preserve Buyers' and Sellers' legitimate business interests and the value of the Business, the Acquired Assets, the Sold Shares and the Sellers' other businesses, and to prevent any unfair advantage conferred on any party and their respective successors.

(c) The parties hereto recognize that the Laws and public policies of the various jurisdictions around the world may differ as to the validity and enforceability of covenants similar to those set forth in this Section 5.12. It is the intention of the parties that the provisions of this Section 5.12 be enforced to the fullest extent permissible under the Laws and policies of each jurisdiction in which enforcement may be sought, and that the unenforceability (or the modification to conform to such Laws or policies) of any provisions of this Section 5.12 shall not render unenforceable, or impair, the remainder of the provisions of this Section 5.12.

(d) If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in this Section 5.12 is invalid or unenforceable, then the parties agree that the court or tribunal will have the power (but without affecting the right of Sellers or Buyers to obtain the relief provided for in this Section 5.12 in any jurisdiction other than such court's or tribunal's jurisdiction) to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. To the extent it may effectively do so under applicable Law, each of the Buyers and the Sellers hereby waives on its own behalf and on behalf of its successors, any provision of Law which renders any provision of this Section 5.12 invalid, void or unenforceable in any respect.

(e) Each of the parties hereto acknowledges and agrees that the remedy of indemnity payments pursuant to Article IX and other the remedies at law for any breach of the requirements of this Section 5.12 would be inadequate, and agrees and consents that, without intending to limit any additional remedies that may be available, temporary and permanent injunctive and other equitable relief may be granted without proof of actual damage or inadequacy of legal remedy in any proceeding which may be brought to enforce any of the provisions of this Section 5.12.

(f) In addition to the foregoing, the Sellers agree that they shall not, and shall cause their Affiliates not to, discourage any of the persons listed on Schedule 5.12(f) ("Key Employees") from accepting Buyers' offers of employment following the Closing. Sellers shall make the Key Employees available to Buyers, to an extent that does not interfere unreasonably with the management of the Business, for the purpose of facilitating discussions between the Buyers and the Key Employees.

SECTION 5.13. Use of Names.

(a) The parties agree that at the Closing appropriate affiliates of the Sellers and Buyers shall enter into a license agreement, for a period of 12 months and otherwise on terms and conditions substantially as set forth on Exhibit H or as may be mutually agreed, for the use by the Buyers of the "Ingersoll-Rand" brand name in the Business (the "IR License Agreement"). The Buyers acknowledge and agree that the Buyers and their respective Affiliates, except as will be expressly set forth in the IR License Agreement, do not and shall not by virtue of the transactions contemplated by this Agreement or otherwise, obtain any right, title or interest in, to or under the "Ingersoll-Rand" brand name or "IR" logotype, all of which are, and will remain, the sole property of Sellers and their Affiliates.

(b) Each of the parties hereto acknowledges and agrees that the remedy at law for any breach of the requirements of this Section 5.13 would be inadequate, and agrees and consents that, without intending to limit any additional remedies that may be available, temporary and permanent injunctive and other equitable relief may be granted without proof of actual damage or inadequacy of legal remedy, and without posting any bond or other undertaking, in any proceeding which may be brought to enforce any of the provisions of this Section 5.13.

SECTION 5.14. Credit and Performance Support Obligations.

(a) The Buyers agree to use all commercially reasonable efforts to cause IR and its Affiliates (other than the Sold Companies) to be absolutely and unconditionally relieved on or prior to the Closing Date of all Liabilities arising out of the letters of credit, performance bonds and other similar items issued and outstanding, as described on Schedule 5.14(a), and the Buyers shall indemnify IR and its Affiliates against any Losses of any kind whatsoever with respect to such Liabilities. The Buyers agree to continue to use all commercially reasonable efforts after the Closing Date to relieve IR and its Affiliates of all such Liabilities.

(b) The Sellers agree to use all commercially reasonable efforts to cause the Buyers and the Sold Companies to be absolutely and unconditionally relieved on or prior to the Closing Date of all Liabilities arising out of the letters of credit, performance bonds and other similar items issued and outstanding, as described on Schedule 5.14(b), and the Sellers shall indemnify the Buyers and the Sold Companies against any and all Losses of any kind whatsoever with respect to such Liabilities. The Sellers agree to continue to use all commercially reasonable efforts after the Closing Date to relieve the Buyers and the Sold Companies of all such Liabilities.

SECTION 5.15. Further Assurances.

(a) Subject to Section 5.3, each of the parties hereto shall use all commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such documents and other papers, as may be required to consummate the transactions contemplated by this Agreement. Without limiting the foregoing, subject to the provisions of Section 5.4, after the Closing Date each of the Buyers and the Sellers at the reasonable request of the other shall execute and deliver, or cause to be executed and delivered, to or as directed by, and at the reasonable expense of, the requesting party (i) such assignments, deeds, bills of sale and other instruments of transfer as either party reasonably may request as necessary or desirable in order to effect or further evidence the sale and assignment of the Acquired Assets to the Buyers and the retention of the Excluded Assets by Sellers as specified in Section 2.1, and (ii) such assumption agreements (including assumption agreements in relation to specific Acquired Contracts (including such assumption agreements expressly for the benefit of the counterparties thereto)) and other instruments of assumption as either party reasonably may request as necessary or desirable in order to effect or further evidence the assumption of, and agreement to pay, perform and discharge when due, the Assumed Liabilities by the Buyers and the Excluded Liabilities by the Sellers and their Affiliates, all as specified in Section 2.2, or to obtain releases of the Sellers and their Affiliates from any Liability with respect to the Assumed Liabilities or to obtain releases of the Buyers and their Affiliates from any Liability with respect to the Excluded Liabilities.

(b) To the extent that, from time to time after the Closing, Sellers and their respective Affiliates and/or the Buyers and the Sold Companies shall identify Assets that are included in the Acquired Assets but that are in the possession of the Sellers or their respective Affiliates, the Sellers shall use all commercially reasonable efforts to locate such items of Acquired Assets and, to the extent that it is successful in locating such items, take such action as is necessary to put the Buyers or one of their Affiliates in actual possession and control thereof (it being understood and agreed that delivery thereof to the nearest facility of any Buyer or its Affiliates shall in any event suffice), all of the foregoing at the Buyers' reasonable expense. To the extent that, from time to time after the Closing, the Buyers, the Sold Companies or their respective Affiliates and/or Sellers shall identify Assets that are included in the Excluded Assets, but that are in the possession of any Buyer or any of its Affiliates (including the Sold Companies), the Buyers shall use all commercially reasonable efforts to locate such items of Excluded Assets and, to the extent that they are successful in locating such items, take such action as is necessary to put Sellers in actual possession thereof (it being understood and agreed that delivery thereof to the nearest facility of any Seller shall in any event suffice), all of the foregoing at Sellers' reasonable expense.

SECTION 5.16. Intercompany Debt. To the extent reasonably practicable and permissible under applicable Laws, to the extent that there are receivables or payables between the Sold Companies, on the one hand, and the Sellers or any of their Affiliates, on the other hand (the "Intercompany Payables and Receivables"), all such payables shall be paid and satisfied by the party that is the obligor on or prior to the Closing Date. To the extent any Intercompany Payables and Receivables are not so paid and settled, such Intercompany Payables and Receivables shall be included in Estimated Cash and adjusted in accordance with Section 2.3, except where such Intercompany Payables and Receivables are as a result of normal trading, in which case, they shall be reflected on the Statement of Final Net Asset Value.

SECTION 5.17. Shared Sales & Service Agreements. The Buyers shall use commercially reasonable efforts to release the Sellers from Liabilities that Sellers may incur under the Shared Sales & Service Agreements, but only to the extent that such Liabilities relate to or arise from (A) the Business or the products of the Business purchased or acquired by Buyers, or (B) the transactions contemplated by this Agreement. Without limiting the foregoing, the Buyers shall make a bona fide written offer to the applicable counterparty to each such Shared Sales & Service Agreement to enter into a new dealer or distributor Contract relating to the distribution of products of the Business, on commercially reasonable terms. The Sellers agree to cooperate reasonably in all such efforts. The Sellers or their Affiliates, as applicable, shall take action after the Buyers' written offer is made with respect to such Shared Sales & Service Agreement to remove the products of the Business from the scope of the Shared Sales & Service Agreement in accordance with Buyers' reasonable direction. The Buyers will reimburse, indemnify and hold harmless the Sellers and their Affiliates against any Losses incurred by any IR Indemnified Persons that relate to the Business and that result from any claim by the counterparty to any Shared Sales & Service Agreement to the extent such claim arises out of the sale of the Business to the Buyers or any termination or deemed termination of any Shared Sales & Service Agreement arising out of the sale of the Business to the Buyers or the separation of Business products from the Shared Sales & Service Agreements as described above. The Sellers will reimburse, indemnify and hold harmless the Buyer and its Affiliates against any Losses incurred by any Buyer Indemnified Persons that result from any claim by the counterparty to any Shared Sales & Service Agreement to the extent such claim is not related to the Business, the transactions contemplated hereby or the separation of Business products from the Shared Sales & Service Agreements.

SECTION 5.18. Expenses; Transfer Taxes.

(a) Whether or not the Closing takes place, and except as otherwise specified in this Agreement, all costs and expenses incurred in connection with this Agreement and the Closing Agreements and the transactions contemplated hereby and thereby shall be paid by the party incurring such expense.

(b) All Transfer Taxes applicable to the conveyance and transfer from Sellers to Buyers of the Sold Shares, Sold Companies, the Business or the Acquired Assets and any other transfer or documentary Taxes in connection therewith shall be borne by the Buyers; provided, that for the avoidance of doubt, Transfer Taxes shall not include any withholding Taxes that are withheld in accordance with Section 2.3(a) (except to the extent such withheld Taxes are, in fact, Transfer Taxes), or any other Taxes measured by reference to the income or gain of the Sellers or any one of the Sellers. Each party shall use reasonable efforts to avail itself of any available exemptions from any such Taxes or fees, and to cooperate with the other parties in providing any information and documentation that may be necessary to obtain such exemptions.

(c) The costs of recording documents conveying title from Sellers to Buyers (including deeds and assignments, as well as any surveys and policies of title insurance that may be required or desired) covering any or all of the Real Property shall be borne by Buyers.

SECTION 5.19. Collection of Receivables. The Buyers shall have the right and authority, from and after the Closing, to collect for their own account all Receivables of the Business included in the Acquired Assets (the "Closing Receivables") and to endorse with the name of any Seller any checks or drafts received with respect to any Closing Receivables. The Sellers shall (i) deliver to the Buyers such documentation of, and information relating to, the Closing Receivables as the Buyers shall reasonably request and (ii) promptly deliver to the Buyers any cash or other property received by them in respect of any Closing Receivables, and the Buyers shall reimburse the Sellers for their reasonable expenses incurred in connection therewith. From and after the Closing Date, the Buyers promptly shall deliver or cause to be delivered to the Sellers any proceeds of Receivables received directly or indirectly by any Buyer or the Sold Companies with respect to any Excluded Assets or businesses or Assets of IR and its Affiliates other than the Acquired Assets or the Business, and the Sellers shall reimburse the Buyers for their reasonable expenses incurred in connection therewith. From and after the Closing Date, the Sellers promptly shall deliver or cause to be delivered to the Buyers any proceeds of Receivables received directly or indirectly by IR or its Affiliates (other than the Sold Companies or an Asset Seller) with respect to the Business, and the Buyer shall reimburse the Sellers for their reasonable expenses incurred in connection therewith.

SECTION 5.20. Assumption of Litigation.

(a) As soon as reasonably practicable after the Closing, the Buyers agree to assume the defense of any and all present or future claims, proceedings and other litigation relating to the Business (to the extent the same are Assumed Liabilities), and, whether or not any of the Sellers or their Affiliates are party to such claims, proceedings or other litigations, to indemnify the Sellers and their Affiliates (other than the Sold Companies) in respect of any Liability, claim, damage or expense (including reasonable attorney's fees) of any kind whatsoever which the Sellers or any of their Affiliates may incur arising out of or relating to any such litigation or claim. The Buyers shall have the right to assume and conduct the defense of any matters assumed by it pursuant to this Section and the Sellers and their Affiliates shall cooperate in such defense to the extent reasonably requested by the Buyers.

(b) As soon as reasonably practicable after the Closing, the Sellers agree to assume the defense of any and all present or future claims, proceedings and other litigation not relating to the Business (to the extent the same are Excluded Liabilities), and, whether or not any of the Sold Companies are party to such claims, proceedings or other litigations, to indemnify the Buyer and the Sold Companies in respect of any Liability, claim, damage or expense (including reasonable attorney's fees) of any kind whatsoever which the Buyer or the Sold Companies may incur arising out of or relating to any such litigation or claim. The Sellers shall have the right to assume and conduct the defense of any matters assumed by it pursuant to this Section and the Buyer and the Sold Companies shall cooperate in such defense to the extent reasonably requested by the Sellers.

SECTION 5.21. Post-Closing Cooperation.

(a) The Buyers, on the one hand, and Sellers, on the other, shall cooperate with each other, and shall cause their officers, employees, agents, auditors and representatives to cooperate with each other after the Closing to ensure the orderly transition of the Business from

the Sellers to the Buyers and to minimize any disruption to the Business and the other respective businesses of the Sellers and the Buyers that might result from the transactions contemplated hereby. After the Closing, upon reasonable notice, the Buyers and the Sellers shall furnish or cause to be furnished to each other and their employees, counsel, auditors and other representatives and advisors reasonable access (including the ability to make copies), during normal business hours, to such employees, advisors, representatives, Books and Records relating to the Business within the control of such party or any of its Affiliates as is reasonably necessary for (i) financial reporting, Tax and accounting matters and (ii) defense or prosecution of litigation and disputes.

(b) Except as otherwise provided pursuant to Section 5.5 hereunder with respect to Tax matters and Tax records, each Buyer and each Seller will retain all Books and Records and other documents pertaining to the Business in existence on the Closing Date for a period of five years following the Closing. No such Books and Records or other documents shall be destroyed or disposed of by any retaining party during such five year period without first advising the other party in writing and giving such party a reasonable opportunity to obtain possession thereof for the purposes permitted by this Section 5.21.

(c) Each party shall reimburse the other for reasonable out-of-pocket costs and expenses incurred in assisting the other pursuant to this Section 5.21. Neither party shall be required by this Section 5.21 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations. Any information relating to the Business received by the Seller and its employees, counsel, auditors and other representatives and advisors pursuant to this Section 5.21 shall be subject to the Confidentiality Agreement.

SECTION 5.22. Termination of German Control and Profit and Loss Transfer Agreement.

The Sellers shall terminate the domination agreement dated 20 December 1991 (the "Domination Agreement") and the control and profit and loss transfer agreement (the "ABG Agreement") dated September 5, 2001 with amendment dated November 3, 2005 between Ingersoll-Rand Beteiligungs GmbH ("IRBet", acting as the controlling company) and IR Germany (acting as the controlled entity) with effect as of the Profit Sharing Termination Date, such date being March 31, 2007 or as soon as possible thereafter and in no case later than December 31st, 2007. The Sellers shall in due course provide evidence to the Buyer regarding the termination of the Domination Agreement and the ABG Agreement and the Parties shall cooperate as appropriate towards such termination. The Parties recognize that IRBet is, pursuant to German civil law, entitled to receive from IR Germany any pre-tax profits up until the Profit Sharing Termination Date, and is required to compensate IR Germany for any losses accounted for by IR Germany during 2007. IRBet hereby waives ("verzichtet auf") its rights under the ABG Agreement to receive IR Germany's profits for the period of January 1, 2007 until the Profit Sharing Termination Date. The Seller shall furthermore undertake all reasonable efforts to terminate and wind up the fiscal unity for German Value-Added Tax purposes between IRBet and IR Germany as of the Closing Date and the Parties shall cooperate as appropriate to this end.

ARTICLE VI

CONDITIONS TO THE SELLERS' OBLIGATIONS

The obligation of the Sellers to effect the Closing under this Agreement is subject to the satisfaction, at or prior to the Closing, of each of the following conditions, unless validly waived in writing by IR.

SECTION 6.1. Representations and Warranties. The Buyers' representations and warranties made in this Agreement shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly relate to a specified date (in which case as of such specified date)) except for such failures of the representations and warranties to be so true and correct that, in the aggregate, do not, and would not reasonably be expected to, prevent or materially delay the ability of the Buyers to consummate the transactions contemplated by this Agreement.

SECTION 6.2. Performance. The Buyers shall have performed and complied in all material respects with all agreements and obligations required by this Agreement to be so performed or complied with by them prior to the Closing.

SECTION 6.3. Officer's Certificate. Buyer Parent shall have delivered to the Sellers a certificate, dated as of the Closing Date and executed by an officer of Buyer Parent, certifying to the fulfillment of the conditions specified in Sections 6.1 and 6.2 hereof.

SECTION 6.4. Regulatory Approvals. Subject to Section 2.4(b), all applicable waiting periods under the HSR Act with respect to the transactions contemplated hereby shall have expired or been terminated, and all Consents required under Other Competition Laws and other applicable Laws and regulations with respect to the transactions contemplated hereby, in each case in the jurisdictions set forth on Schedule 6.4, shall have been obtained.

SECTION 6.5. Injunction. Subject to Section 2.4(b), there shall not be in effect any Law or Order directing that the transactions provided for herein not be consummated as provided herein or which has the effect of rendering it impossible or illegal to consummate such transactions, and no proceeding shall have been commenced by any Governmental Authority in such jurisdictions which is reasonably likely to result in any such Law or Order (for the avoidance of doubt, a trial, hearing or other court proceeding in which no Governmental Authority is a plaintiff or claimant shall not be deemed to be "commenced by any Governmental Authority").

SECTION 6.6. Closing Agreements. Each Closing Agreement and all other documents required to have been executed and delivered to any Seller prior to Closing shall have been executed and delivered by all parties thereto (other than any Seller) in the form contemplated by this Agreement and shall be in full force and effect. The Buyers or Affiliates of Buyers that are parties to the Closing Agreements shall have the ability to perform in all material respects their respective obligations under the Closing Agreements..

SECTION 6.7. Labor Consultations. The Sellers and Buyers shall have completed all legally required notifications to, and all legally required consultations with, the

employees, employee representatives, work councils, unions, labor boards and relevant government agencies concerning the transactions contemplated hereby with respect to the employees of the Sold Companies and the Business.

ARTICLE VII

CONDITIONS TO THE BUYERS' OBLIGATIONS

The obligation of the Buyers to effect the Closing under this Agreement is subject to the satisfaction, at or prior to the Closing, of each of the following conditions, unless waived in writing by Buyer Parent.

SECTION 7.1. Representations and Warranties. The Sellers' representations and warranties made in this Agreement (without giving effect to any materiality or Company Material Adverse Effect qualifiers contained therein) shall be true and correct in all respects on and as of the Closing Date as though made on and as of such date, except to the extent such representations and warranties expressly relate to a specified date (in which case such representations and warranties shall be true and correct on and as of such specified date), except for such failures of the representations and warranties to be so true and accurate that, in the aggregate, do not have, and would not reasonably be expected to have, a Company Material Adverse Effect.

SECTION 7.2. Performance. The Sellers shall have performed and complied in all material respects with all agreements and obligations required by this Agreement to be performed or complied with by them prior to the Closing.

SECTION 7.3. Officer's Certificate. IR shall have delivered to the Buyers a certificate, dated as of the Closing Date and executed by an officer of IR, certifying to the fulfillment of the conditions specified in Sections 7.1 and 7.2 hereof.

SECTION 7.4. Regulatory Approvals. Subject to Section 2.4(b), all applicable waiting periods under the HSR Act with respect to the transactions contemplated hereby shall have expired or been terminated, and all Consents required under Other Competition Laws and other applicable Laws and regulations with respect to the transactions contemplated hereby, in each case in the jurisdictions set forth on Schedule 6.4, shall have been obtained.

SECTION 7.5. Injunctions. Subject to Section 2.4(b), there shall not be in effect any Law or Order directing that the transactions provided for herein not be consummated as provided herein or which has the effect of rendering it impossible or illegal to consummate such transactions, and no proceeding shall have been commenced by any Governmental Authority in such jurisdictions which is reasonably likely to result in any such Law or Order (for the avoidance of doubt, a trial, hearing or other court proceeding in which no Governmental Authority is a plaintiff or claimant shall not be deemed to be "commenced by any Governmental Authority").

SECTION 7.6. Closing Agreements. Each Closing Agreement and all other documents required to have been executed and delivered to any Buyer prior to Closing shall have been executed and delivered by all parties thereto (other than any Buyer) in the form

contemplated by this Agreement and shall be in full force and effect. The Sellers or Affiliates of Sellers that are parties to the Closing Agreements shall have the ability to perform in all material respects their respective obligations under the Closing Agreements.

SECTION 7.7. Labor Consultations. The Sellers and Buyers shall have completed all legally required notifications to, and all legally required consultations with, the employees, employee representatives, work councils, unions, labor boards and relevant government agencies concerning the transactions contemplated hereby with respect to the employees of the Sold Companies and the Business.

ARTICLE VIII

TERMINATION

SECTION 8.1. Termination.

(a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the transactions contemplated by this Agreement abandoned at any time prior to the Closing:

(i) by mutual written consent of IR and Buyer Parent;

(ii) by IR if any of the conditions set forth in Article VI shall have become incapable of fulfillment on or prior to the Termination Date and shall not have been waived by IR, unless the failure of such condition is the result of a breach of this Agreement by Sellers;

(iii) by Buyer Parent if any of the conditions set forth in Article VII shall have become incapable of fulfillment on or prior to the Termination Date and shall not have been waived by Buyer Parent, unless the failure of such condition is the result of a breach of this Agreement by Buyers;

(iv) by either the Sellers or the Buyers if any Governmental Authority of competent jurisdiction shall have issued an Order or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated hereby (after giving effect to the parties' obligations under Section 5.3) and such Order or other action shall have become final and nonappealable; and

(v) by Sellers or Buyers, if the Closing (other than Deferred Transfers permitted under Section 2.4(b)) does not occur on or prior to August 31, 2007 (the "Termination Date"); provided that a party may not terminate pursuant to this clause if the failure of such consummation shall be due to the failure of the party wishing to terminate to comply in all material respects with the agreements and covenants contained herein.

(b) In the event of termination by Sellers or Buyers pursuant to this Section 8.1, written notice thereof shall forthwith be given to the other and the transactions contemplated by this Agreement shall be terminated, without further action by any party. If the transactions contemplated by this Agreement are terminated as provided herein, Buyers shall return all documents and other material received from Sellers relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to Sellers.

SECTION 8.2. Effect of Termination. If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in Section 8.1, this Agreement shall become null and void and of no further force and effect, except for the provisions of (i) Section 5.2 relating to the obligation of the Buyers and the Sellers to keep confidential certain information and data obtained by it from the other party, (ii) Section 5.18 relating to certain expenses, (iii) Section 8.1 and this Section 8.2 and (iv) Section 10.10 relating to publicity, which shall survive such termination. Nothing in this Section 8.2 shall be deemed to release any party from any Liability for any breach by such party of the terms and provisions of this Agreement; provided that no party hereto shall be entitled to recover any special, indirect, incidental, punitive or consequential damages whatsoever, except (i) in the event of fraud or willful misconduct, and (ii) in the event that a third party has been awarded special, indirect, incidental, punitive or consequential damages.

ARTICLE IX

INDEMNIFICATION

SECTION 9.1. Indemnification by the Sellers.

(a) Subject to the limits set forth in this Article IX, from and after the Closing, the Sellers agree, jointly and severally, to indemnify, defend and hold harmless each Buyer and each of their Affiliates (including, after the Closing, the Sold Companies) and their respective officers, directors, stockholders, employees, agents and representatives (the "Buyer Indemnified Persons") against and in respect of any and all actions, suits, proceedings, claims, Liabilities, losses, damages, costs and expenses (including reasonable fees and expenses of counsel) (collectively, "Losses"), that they may incur or suffer and that arise out of, result from or are due to (i) any breach of any representation or warranty of the Sellers contained in this Agreement (other than the Tax representations and warranties contained in Section 3.11, which are addressed separately in the Tax indemnity set forth in Section 5.6, and other than the representations and warranties contained in Sections 3.1, 3.2 and 3.3, 3.14 (as it relates to title), 3.18 (as it relates to title), and 3.19 (as it relates to title) (such parts of Article III being referred to collectively as, the "Title Representations")), in any Closing Agreement or in any certificates delivered in connection herewith or therewith, (ii) any breach of any Title Representations, (iii) any failure of Sellers to perform any covenant or other agreement of the Sellers contained in this Agreement or any Closing Agreement and (iv) any Excluded Asset or Excluded Liability.

(b) Anything to the contrary contained herein notwithstanding, in respect of all Losses and claims under clauses (i) and (ii) of Section 9.1(a) and in respect of all Losses and claims under Sections 5.5, 5.6, 5.7 and 5.8 hereof (other than as set forth in Section 9.1(f) below), none of the Buyer Indemnified Persons shall be entitled to recover from the Sellers any

Losses until the total of all Losses, regardless of amount, collectively exceed $15,000,000, and then only for the amount by which such Losses collectively exceed $15,000,000; provided, however, that any Loss and claim under Sections 5.5, 5.6, 5.7 or 5.8 hereof that is less than the $100,000 threshold provided in Section 9.1(e) below shall not be counted toward the calculation of Losses under this Section 9.1(b).

(c) Anything to the contrary contained herein notwithstanding, in respect of all Losses and claims under clause (i) of Section 9.1(a) and in respect of all Losses and claims under Sections 5.5, 5.6, 5.7 and 5.8 hereof (other than as set forth in Section 9.1(f) below), the Buyer Indemnified Parties shall not be entitled to recover more, in the aggregate, than 30% of the Purchase Price (as finally adjusted) from the Sellers with respect to all such Losses.

(d) Anything to the contrary contained herein notwithstanding, in respect of all Losses and claims under Title Representations, such claims shall first be applied to the 30% cap described in Section 9.1(c) above, as with all other claims. Once such 30% cap has been exhausted, if there are remaining claims under Title Representations, then the Buyer Indemnified Parties shall be entitled to recover additional amounts not to exceed, when aggregated with recoveries under the 30% cap described above, a total recovery of 100% of the Purchase Price (as finally adjusted) from the Sellers.

(e) Anything to the contrary contained herein notwithstanding, Buyer Indemnified Parties shall not be entitled to recover any amount for any individual Loss and claim under Sections 5.5, 5.6, 5.7 or 5.8 hereof (other than as set forth in Section 9.1(f) below) that is less than $100,000.

(f) Anything to the contrary contained herein notwithstanding, the Buyer Indemnified Parties shall be entitled to recover from the Sellers an amount equal to any and all Tax Liabilities suffered by IR Germany in relation to the ABG Agreement, and any and all Losses and claims in respect of clauses 5.6(a)(i), (iii) and (iv), in each case without regard to any of the financial limits described above.

No indemnification claim under this Agreement may be asserted or pursued against the Sellers by any entity that is a Sold Company as of the Closing Date if such entity shall cease to be controlled by the Buyers or their Affiliates, except with respect to indemnification claims with respect to (i) the Title Representations, (ii) Sections 5.5, 5.6, 5.7 and 5.8 hereof and (iii) the Excluded Assets and/or the Excluded Liabilities.

SECTION 9.2. Indemnification by the Buyers.

(a) From and after the Closing, the Buyers agree, jointly and severally, to indemnify, defend and hold each Seller and each of their Affiliates and their respective officers, directors, stockholders, employees, agents and representatives (the "IR Indemnified Persons") harmless from and in respect of any and all Losses that they may incur arising out of or due to (i) any breach of any representation or warranty of the Buyers contained in this Agreement, (ii) any failure of Buyers to perform any covenant or other agreement of the Buyers contained in this Agreement and (iii) any Acquired Asset or Assumed Liability.

(b) Anything to the contrary contained herein notwithstanding, in respect of clause (i) of Section 9.2(a), the following thresholds and limits shall apply:

(i) none of the IR Indemnified Persons shall be entitled to recover from the Buyers any Losses, until such Losses, regardless of amount, collectively exceed $15,000,000, and then only for the amount by which such Losses collectively exceed $15,000,000; and

(ii) the IR Indemnified Parties shall not be entitled to recover more, in the aggregate, than 30% of the Purchase Price (as finally adjusted) from the Buyers with respect to all such Losses.

(c) Anything to the contrary contained herein notwithstanding, the Buyers shall, to the extent that IR Germany should incur losses in its 2007 accounts per German Generally Accepted Accounting Principles (the "IR Germany Losses") and receive compensation for the IR Germany Losses from IR Bet pursuant to the Domination Agreement or ABG Agreement, indemnify IR Bet in an amount equal to the received compensation.

SECTION 9.3. Indemnification as Exclusive Remedy. Except as otherwise expressly provided in Article V, and except for claims or actions for fraud, the indemnification provided in this Article IX, subject to the limitations set forth herein, shall be the exclusive post-Closing remedy available to any party in connection with any Losses arising out of or resulting from this Agreement or the transactions contemplated hereby. The foregoing notwithstanding, nothing in this Section 9.3 shall limit or restrict the ability or right of any party hereto to seek injunctive or other equitable relief for any breach or alleged breach of any provision of Articles II, V or X of this Agreement; provided that any procedures in respect of and limitations on Losses or Liabilities in this Article IX shall in no event be diminished or circumvented by such relief.

SECTION 9.4. Indemnification Calculations.

(a) The amount of any Losses for which indemnification is provided under this Agreement shall be computed net of any insurance proceeds (or other third-party indemnification proceeds) received by the indemnified party in connection with such Losses. If an indemnified party receives insurance proceeds (or other third-party indemnification) in connection with Losses for which it has received indemnification, such party shall refund to the Indemnifying Party the amount of such insurance proceeds promptly after receipt thereof, up to the amount of indemnification received. An indemnified party shall use its commercially reasonable efforts to pursue insurance claims with respect to any Losses. The Buyers shall surrender (and otherwise become subrogated) to the Sellers rights to the recovery on, and the conduct of any Tax Claims against the Sellers' third-party indemnitors, but only if and when the Buyer has actually received full compensation from the Sellers in respect of the matter that is the subject of such claims. If the amount with respect to which any claim is made under this Agreement (an "Indemnity Claim") gives rise to a currently realizable Tax Benefit (as defined below) to the party making the claim, the indemnity payment shall be reduced by the amount of such Tax Benefit available to the party making the claim. To the extent that such Indemnity

Claim does not give rise to a currently realizable Tax Benefit, if the amount with respect to which such Indemnity Claim is made is reasonably expected to give rise to a material, subsequently realized Tax Benefit to the other party that made the claim, the indemnity payment shall be reduced by the reasonably estimated present value of such Tax Benefit. For purposes of this Section 9.4(a), a "Tax Benefit" to a party means an amount by which the tax liability of such party (or group of Affiliates including such party) is reduced as a result of its receipt of payment for such Indemnity Claim or its payment of the Liability giving rise to such Indemnity Claim, such amount to be determined at an assumed marginal rate equal to the highest marginal tax rate then in effect for corporate taxpayers in the relevant jurisdiction. Where a party has other losses, deductions, credits or items available to it, the Tax Benefit from any losses, deductions, credits or items relating to the Indemnity Claim shall be deemed to be realized after any other losses, deductions, credits or items. The parties agree that any indemnification payments made pursuant to this Agreement shall be treated as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

(b) Indemnifiable Losses shall in no event include any special, indirect, incidental, punitive or consequential damages whatsoever, except (i) in the event of fraud, gross negligence or willful misconduct and (ii) in the event that a third party has been awarded special, indirect, incidental, punitive or consequential damages.

SECTION 9.5. Survival. The representations and warranties of the parties contained in this Agreement or in any instrument delivered pursuant hereto will survive the Closing and will remain in full force and effect thereafter until 5:00 p.m. (New York City time) on the day that is eighteen (18) months after the Closing Date; provided that (i) the survival of the representations and warranties contained in Section 3.11 shall be governed by Section 5.6(e), (ii) the Title Representations shall expire at 5:00 p.m. (New York City time) on the tenth (10^{th}) anniversary of the Closing Date, and (iii) the representations and warranties shall survive beyond the respective periods set forth in this Section 9.5 with respect to any breach thereof if written notice thereof shall have been duly given within such period in accordance with Section 9.6 hereof.

SECTION 9.6. Notice and Opportunity to Defend. If there occurs an event which a party asserts is an indemnifiable event pursuant to Section 9.1 or 9.2, the party or parties seeking indemnification shall notify the other party or parties obligated to provide indemnification (the "Indemnifying Party") promptly. If such event involves any claim or the commencement of any action or proceeding by a third person, the party seeking indemnification will give such Indemnifying Party prompt written notice of such claim or the commencement of such action or proceeding. However, the failure to provide prompt notice as provided herein will relieve the Indemnifying Party of its obligations hereunder only if, and to the extent that, such failure actually and materially prejudices the Indemnifying Party hereunder. In case any such action shall be brought against any party seeking indemnification and it shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party shall be entitled to assume the defense thereof, with counsel selected by the Indemnifying Party and, after notice from the Indemnifying Party to such party or parties seeking indemnification of such election so to assume the defense thereof, the Indemnifying Party shall not be liable to the party or parties seeking indemnification hereunder for any legal expenses of other counsel or any other expenses subsequently incurred by such party or parties in connection with the defense thereof. The

Indemnifying Party and the party seeking indemnification agree to cooperate fully with each other and their respective counsel in connection with the defense, negotiation or settlement of any such action or asserted Liability. The party or parties seeking indemnification shall have the right to participate at their own expense in the defense of such action or asserted Liability. If the Indemnifying Party assumes the defense of an action, no settlement or compromise thereof may be effected (i) by the Indemnifying Party without the written consent of the indemnified party (which consent shall not be unreasonably withheld or delayed) unless all relief provided is paid or satisfied in full by the Indemnifying Party or (ii) by the indemnified party without the consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed). In no event shall an Indemnifying Party be liable for any settlement effected without its written consent.

SECTION 9.7. Tax Indemnity. Other than as specifically set forth in Sections 9.1, 9.2, 9.4 and 9.8, indemnification with respect to Taxes shall be governed by Section 5.5, Section 5.6, Section 5.7 and Section 5.8.

SECTION 9.8. Other Limitations on Indemnification. Notwithstanding anything to the contrary contained in this Agreement, no Buyer Indemnified Person shall be entitled to indemnification under Article V or IX for any Losses to the extent that such Losses are reflected as a Liability of the Business on the Final Statement of Net Asset Value.

SECTION 9.9. No Right of Contribution. After the Closing, the Sold Companies shall have no Liability to indemnify either the Sellers or any of their Affiliates on account of the breach of any representation or warranty or the nonfulfillment of any covenant or agreement of the Sellers or their Affiliates; and Sellers shall have no right of contribution against the Sold Companies. In addition to any other remedy which may be available at law or in equity, the Buyer or the Sold Companies shall be entitled to specific performance and injunctive relief to enforce this Section 9.9, without being required to post a bond or give other security.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. Governing Law. This Agreement shall be construed under and governed by the Laws of the State of New York.

SECTION 10.2. Projections. In connection with the Buyers' investigation of the Sold Companies and the Business, the Buyers may have received, or may receive, from the Sellers and/or their respective representatives certain projections and other forecasts for the Business, and certain business plan and budget information. The Buyers acknowledge that (i) there are uncertainties inherent in attempting to make such projections, forecasts, plans and budgets, (ii) the Buyers are familiar with such uncertainties, (iii) the Buyers are taking full responsibility for making their own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, plans and budgets so furnished to them, and (iv) the Buyers will not assert any claim against the Sellers or any of their respective directors, officers, employees, Affiliates or representatives, or hold the Sellers or any such Persons liable, with respect to such projections, forecasts, business plans and budget information. Accordingly, the Buyers acknowledge that the

Sellers make no representation or warranty with respect to such projections, forecasts, business plans or budget information and that the Sellers make only those representations and warranties explicitly set forth in Article III.

SECTION 10.3. Materiality; Schedules.

(a) As used in this Agreement, unless the context would require otherwise, the terms "material" and the concept of the "material" nature of an effect upon the Sold Companies or the Business shall be measured relative to the entire Business, taken as a whole, as such business is currently being conducted.

(b) There have been included in the Schedules and may be included elsewhere in this Agreement items which are not "material" within the meaning of the immediately preceding sentence for informational purposes and in order to avoid any misunderstanding, and such inclusion shall not be deemed to be an agreement by the Sellers that such items are "material" or to further define the meaning of such term for purposes of this Agreement. With respect to the Schedules hereto, no disclosure made on any Schedule with respect to any representation or warranty shall be deemed to be made with respect to any other representation or warranty unless expressly made in a schedule related to such other representation and warranty (by cross-reference or otherwise) or unless, and only to the extent that, it is apparent on the face of such disclosure that such disclosure contains information which also modifies another representation and warranty herein.

SECTION 10.4. Amendment. This Agreement may not be amended, modified or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto.

SECTION 10.5. Waiver. Any of the terms or conditions of this Agreement, which may be lawfully waived, may be waived in writing at any time by each party which is entitled to the benefits thereof. Any waiver of any of the provisions of this Agreement by any party hereto shall be binding only if set forth in an instrument in writing signed on behalf of such party. No failure to enforce any provision of this Agreement shall be deemed to or shall constitute a waiver of such provision and no waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

SECTION 10.6. Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by any Buyer or any Seller (including by operation of law in connection with a merger or consolidation of any Buyer or any Seller) without the prior written consent of the other parties hereto. Notwithstanding the foregoing, (a) prior to Closing, a Buyer may assign its right to purchase the Acquired Assets or any of its other rights or any portion thereof hereunder to one or more Affiliates of such Buyer without the prior written consent of Sellers, provided that such assignment shall not relieve any Buyer of its obligations hereunder and further provided that such assignment does not adversely impact or delay the obtaining of any material Consent required by this Agreement to be obtained, and (b) a Buyer may assign its rights hereunder by way of security for indebtedness necessary to fund the Buyers' obligations hereunder and such secured party may assign such rights by way of exercise

of remedies; provided, however, that no assignment shall relieve any Buyer of its obligations hereunder. Any attempted assignment in violation of this Section 10.6 shall be void.

SECTION 10.7. Notices.

(a) Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if (a) personally delivered, (b) sent by an internationally recognized overnight courier service to the recipient at the address below indicated or (c) delivered by facsimile with email or telephonic confirmation of receipt:

If to any of the Buyers:

c/o Volvo CE
Hunderenveld 10
1082 Brussels, Belgium
Attn: General Counsel
Office Tel: +32 2 4 82 50 92
Fax: +32 2 6 75 15 32

With a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022-4834
Attn: Steven Della Rocca
(212) 906-1200
(212) 751-4864

If to any of the Sellers:

c/o Ingersoll-Rand Company
155 Chestnut Ridge Road
P.O. Box 0445
Montvale, New Jersey 07645
Attn: General Counsel
(201) 573-3448 (telecopier)
(201) 573-3473 (telephone)

or to such other address as any party hereto may, from time to time, designate in a written notice given in like manner. Except as otherwise provided herein, any notice under this Agreement will be deemed to have been given (x) on the date such notice is personally delivered or delivered by facsimile or (y) the second succeeding Business Day after the date such notice is delivered to the overnight courier service if sent by overnight courier; provided that in each case notices received after 4:00 p.m. (local time of the recipient) shall be deemed to have been duly given on the next Business Day.

(b) For convenience only, the parties agree that all notices, Consents, directions or other actions that may be given or taken hereunder by the Sellers may be given by IR or by Ingersoll-Rand Company on behalf of the Sellers pursuant to a written instruction or document duly executed by IR or by Ingersoll-Rand Company and that Buyers shall treat any such instrument or document as the action of the Sellers hereunder.

(c) For convenience only, the parties agree that all notices, consents, directions or other actions that may be given or taken hereunder by the Buyers may be given by Buyer Parent on behalf of the Buyers pursuant to a written instruction or document duly executed by Buyer Parent and that Sellers shall treat any such instrument or document as the action of the Buyers hereunder.

SECTION 10.8. Complete Agreement. This Agreement, the Confidentiality Agreement, the Closing Agreements and the other documents and writings referred to herein or delivered pursuant hereto contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and thereof. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 10.9. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

SECTION 10.10. Publicity; Confidentiality.

(a) The Sellers and the Buyers will consult with each other and will mutually agree upon any publication or press release of any nature with respect to this Agreement or the transactions contemplated hereby and shall not issue any such publication or press release prior to such consultation and agreement except as may be required by applicable Law or by obligations pursuant to any listing agreement with any securities exchange or any securities exchange regulation, in which case the party proposing to issue such publication or press release shall make reasonable efforts to consult in good faith with the other party or parties before issuing any such publication or press release and shall provide a copy thereof to the other party or parties prior to such issuance.

(b) Except as requested or required by applicable Law (including securities laws of any jurisdiction and rules and regulations of any applicable stock exchange) or legal, judicial or regulatory process, from and after the date hereof, the parties hereto shall each keep confidential and not directly or indirectly disclose to any third party (other than its Affiliates, officers, directors, employees, attorneys, accountants, advisors, agents and other representatives) the terms and conditions of this Agreement or any Closing Agreement.

SECTION 10.11. Headings. The headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 10.12. Severability. Any provision of this Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to

the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

SECTION 10.13. Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their permitted successors or assigns, any rights or remedies under or by reason of this Agreement.

SECTION 10.14. Consent to Jurisdiction; Waiver of Jury Trial. Each of the parties irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York located in the borough of Manhattan in the City of New York, or if such court does not have jurisdiction, the Supreme Court of the State of New York, New York County, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the parties hereto irrevocably and fully waives the defense of an inconvenient forum to the maintenance of such suit, action or proceeding. Notwithstanding the foregoing, any suit, action or proceeding arising out of this Agreement or any transaction contemplated hereby may be brought in a different jurisdiction if (a) the subject matter of such suit, action or proceeding is such that any judgment or Order arising therefrom must be implemented or enforced solely and entirely within such other jurisdiction, and (b) the courts of such other jurisdiction will not recognize, honor or enforce a judgment or Order handed down by any of the courts described in the first sentence of this Section 10.14. Each of the parties further agrees that service of any process, summons, notice or document to such party's respective address listed above in one of the manners set forth in Section 10.7 hereof shall be deemed in every respect effective service of process in any such suit, action or proceeding. Nothing herein shall affect the right of any Person to serve process in any other manner permitted by Law. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) the United States District Court for the Southern District of New York or (b) the Supreme Court of the State of New York, New York County, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereto hereby irrevocably and unconditionally waive trial by jury in any legal action or proceeding relating to this Agreement or any other agreement entered into in connection therewith and for any counterclaim with respect thereto.

SECTION 10.15. Enforcement of Agreement. Each party acknowledges and agrees that the other party would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by a Seller or Buyer could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which any party may be entitled at law or in equity, prior to Closing it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first above written.

INGERSOLL-RAND COMPANY LIMITED

By: _____
Name: Timothy R. McLevish
Title: Senior VP & CFO

AB VOLVO (PUBL)

By: _____
Name:
Title:

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer, in each case as of the date first above written.

INGERSOLL-RAND COMPANY LIMITED

By: _____
Name:
Title:

AB VOLVO (PUBL)

By: _____
Name: ANTHONY HELSHAM
Title: PRESIDENT & CEO